

BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

Complainant,

vs.

WIRENET OF ARIZONA, LLC;
PHONE COMPANY MANAGEMENT
2, LLC; THE PHONE COMPANY
ARIZONA JOINT VENTURE dba
PHONE COMPANY OF ARIZONA;
ON SYSTEMS TECHNOLOGY, LLC,
and its principals, TIM
WETHERALD, FRANK TRICAMO AND
DAVID STAFFORD; THE PHONE
COMPANY OF ARIZONA, LLP and
its members,

DOCKET NOS.:
T-03889A-02-0796
T-04125A-02-0796
T-04125A-02-0577
T-03889A-02-0578
T-03889A-03-0152
T-03889A-03-0202

Respondents.

AND OTHER RELATED MATTERS.

At: Phoenix, Arizona

Date: November 3, 2003

Filed: NOV 20 2003

REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME I
(Pages 1 through 211, inclusive.)

ARIZONA REPORTING SERVICE, INC.
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Realtime Specialists Phoenix, AZ

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BEFORE THE ARIZONA CORPORATION COMMISSION

UTILITIES DIVISION STAFF,

Complainant,

vs.

WIRENET OF ARIZONA, LLC;
THE PHONE COMPANY MANAGEMENT
GROUP, LLC; THE PHONE COMPANY
OF ARIZONA JOINT VENTURE dba
THE PHONE COMPANY OF ARIZONA;
ON SYSTEMS TECHNOLOGY, LLC,
and its principals, TIM
WETHERALD, FRANK TRICAMO AND
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Arizona Corporation Commission
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2 UTILITIES DIVISION STAFF,)

3)

4 Complainant,)

5 vs.)

6)

7 LIVEWIRENET OF ARIZONA, LLC;)

8 THE PHONE COMPANY MANAGEMENT)

9 GROUP, LLC; THE PHONE COMPANY)

10 OF ARIZONA JOINT VENTURE dba)

11 THE PHONE COMPANY OF ARIZONA;)

12 ON SYSTEMS TECHNOLOGY, LLC,)

13 and its principals, TIM)

14 WETHERALD, FRANK TRICAMO AND)

15 DAVID STAFFORD; THE PHONE)

16 COMPANY OF ARIZONA, LLP and)

17 its members,)

18)

19 Respondents.)

20)

21)

22 AND OTHER RELATED MATTERS.)

23)

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 1 of said
4 Commission, 1200 West Washington Street, Phoenix, Arizona,
5 commencing at 9:06 a.m. on the 3rd of November, 2003.

6

7

BEFORE: PHILIP J. DION, III, Administrative Law Judge

8

9 APPEARANCES:

10

For the Complainant:

11

Messrs. Gary H. Horton and David M. Ronald
12 and Ms. Maureen A. Scott
Staff Attorneys, Legal Division
13 1200 West Washington Street
Phoenix, Arizona 85007-2927

14

15 For the Respondent The Phone Company of Arizona, LLP:

16

SNELL & WILMER, L.L.P.
By Mr. Jeffrey W. Crockett
17 One Arizona Center
400 East Van Buren
18 Phoenix, Arizona 85004

19

For Respondents LiveWireNet of Arizona, LLC; The Phone
20 Company Management Group, LLC; Tim Wetherald; On Systems
Technology:

21

Mr. Tim Wetherald
22 In propria persona
3025 South Parker Road, Suite 1000
23 Aurora, CO 80014

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APPEARANCES:

For Respondent David Stafford Johnson:

Mr. David Stafford Johnson
In propria persona
740 Gilpin Street
Denver, CO 80218

For Respondent Frank Tricamo

Mr. Frank Tricamo
In propria persona
6888 South Yukon Court
Littleton, CO 80128

COLETTE E. ROSS
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1 ALJ DION: Good morning, everyone, and welcome
2 to the Arizona Corporation Commission. My name is Phil
3 Dion. I will be presiding at the hearing today. There
4 are a number of matters in this case. The first one is
5 Docket No. T-03889A-02-0796. It is a complaint that was
6 filed by the Utilities Division, actually the Staff of the
7 Utilities Division against LiveWire which is now known as
8 The Phone Company Management Group, On Systems, its
9 principals, Mr. Wetherald, Mr. Stafford Johnson,
10 Mr. Tricamo, Phone Company Management Group of Arizona,
11 LLP.

12 It is also my understanding that there was
13 another entity called The Phone Company of Arizona Joint
14 Venture d/b/a The Phone Company of Arizona. That was also
15 listed in this complaint.

16 There are a number of alternative Docket Nos.,
17 and I will refer to them one time. There is the Phone
18 Company of Arizona's application to become -- for a CC&N
19 and to be a reseller in the state of Arizona. It is
20 T-04125A-02-0577. There is The Phone Company Management
21 Group, Incorporated's, application for CC&N,
22 T-03889A-02-0578.

23 There is a second cancellation of CC&N. It is
24 for The Phone Company T-03889A-03-0152. And finally there
25 is another cancellation of CCN on behalf of The Phone

1 Company. And that's T-03889A-03-0202.

2 I believe those are all the Dockets in this
3 case. If I have missed one, somebody can correct me if I
4 am wrong. Additionally, there will be some Staff
5 testimony about that.

6 Did I miss one, Mr. Horton?

7 MR. HORTON: No, Your Honor, I believe you got
8 them all.

9 ALJ DION: Okay. With that, why won't we go
10 ahead and take appearances. Start with Staff.

11 MR. HORTON: Thank you, Your Honor. On behalf
12 of Commission Staff, Gary Horton and Maureen Scott and
13 David Ronald.

14 ALJ DION: Good morning.

15 On behalf of the LLP?

16 MR. CROCKETT: Good morning, Your Honor. My
17 name is Jeff Crockett with the law firm of Snell & Wilmer.
18 I am representing The Phone Company of Arizona, LLP, one
19 of the respondents in this proceeding, this consolidated
20 proceeding.

21 I will note for the record that I will be
22 joined today by Mr. Travis Credle who will be presenting
23 testimony later on. Mr. Credle is on the plane right now
24 but due in around 10:00 this morning. So when he gets to
25 the airport he is going to come straight here.

1 ALJ DION: Just for the record, I am going to
2 refer to that entity as the LLP, because there is some
3 name similarities.

4 On behalf of the formerly known LiveWire,
5 Phone Company Management Group?

6 MR. WETHERALD: Yes.

7 ALJ DION: Can you state your name, please.

8 MR. WETHERALD: I am sorry. Tim Wetherald on
9 behalf of Phone Company, or formerly LiveWire, On Systems
10 Technology, and myself.

11 ALJ DION: Okay. If you will put that
12 microphone closer to you, Mr. Wetherald, I would
13 appreciate that.

14 MR. TRICAMO: I will grab this one.

15 ALJ DION: Good morning, Mr. Tricamo.

16 MR. TRICAMO: And I will be representing
17 myself today.

18 ALJ DION: And I recognize Mr. Johnson.

19 MR. JOHNSON: Yes.

20 ALJ DION: Mr. Johnson, I -- you will be
21 representing yourself as well?

22 MR. JOHNSON: Yes, I will.

23 ALJ DION: Again, as I have stated, we are, if
24 we can use the microphones when we talk, I would
25 appreciate it.

1 I know Mr. Johnson is, is an attorney, however
2 not licensed in Arizona, but an attorney nonetheless and,
3 so, familiar with the practices of Superior Court. And
4 essentially those are the rules we operate under here.

5 But just for convenience sake so that it is
6 fairly clear, the Commission operates under its own rules
7 regarding how hearings are conducted. Those rules
8 generally follow what happens in Superior Court. However,
9 the rules of evidence are, the best way to state, are just
10 a little more lax, so lax, while there might be
11 objections -- hearsay is probably the best example.

12 Hearsay is generally not allowed in court,
13 although there are numerous exceptions that make it almost
14 allowed in every instance but theoretically it is not
15 allowed in court. Here there will be times when I may
16 overrule an objection, recognizing that it is hearsay, but
17 I will give it its proper weight.

18 So the ability to present evidence is easier.
19 And it is that way because this is an administrative
20 process and we are trying to be more expedient than the
21 Superior Court process. But also we just have a lot of
22 people who are not familiar or comfortable with the,
23 quote, unquote, legal process. And so we try and
24 accommodate those people as much as possible.

25 I am not trying to talk down to anybody. Just

1 because someone is not a lawyer doesn't mean they can't
2 represent themselves, especially in a situation like this.
3 It is just that I want everybody to be aware of that we
4 will follow rules, but that there will be some latitude
5 given.

6 If at some point, you know, the latitude is
7 leading to us getting off topic or away from, you know, a
8 relevant point, then at that point, we will look at what
9 is happening and try to get back on track.

10 But I didn't want anyone to be intimidated by
11 this process and I wanted everyone to understand that
12 eventually what we are going to do is have opening
13 statements, if you have any. At that point, there will be
14 the presentation of evidence.

15 Staff will go first. It is their burden.
16 They have the burden of proof. This is not a criminal
17 matter. So it is not, they don't have to prove something
18 beyond a reasonable doubt, but they do have to show it by
19 a preponderance of the evidence. And the best way,
20 explanation of that is is it more likely than not. Is
21 that 51 percent to 49, I don't know, but just more likely
22 than not that that's what happened.

23 The respondents in this matter have no burden.
24 They have, they do not have to prove to me a thing. At
25 the conclusion of Staff's case, if it is their opinion

1 that Staff has not presented enough evidence to prove by a
2 of preponderance of evidence that things have happened,
3 there is no obligation for them to mount a defense.

4 That being said, a preponderance of evidence
5 is a standard, as I said, that is much lower than the
6 criminal standard. And so it might be the decision of the
7 respondents that, if it is close, it is something that
8 they would like to tell their side of the story. And that
9 is certainly welcome. I just wanted to let everybody know
10 that that's the standard.

11 So once Staff concludes their case, then the
12 respondents will have the possibility to call their
13 witnesses and present their case, if they choose to do so.
14 At that point, we will then finish with those witnesses.
15 And then if anyone has any rebuttal witnesses, if Staff
16 wants to call anybody for rebuttal, then we will do that,
17 and closing arguments.

18 I kind of skipped over one point which is the
19 examination of the witness. The witness will take the
20 stand and be sworn just like in Superior Court. There
21 will be the direct exam, which is essentially the party
22 who has called that witness will ask questions of that
23 witness. After that, then the parties will have time to
24 cross-examine so they will get to question that witness as
25 well to test veracity, memory, bias, whatever points that

1 those parties want to make.

2 At the conclusion, there will be, there
3 generally is a closing statement. And that happens in
4 trials more than it does here.

5 The other option we have is closing briefs.
6 So we will, at the conclusion of the hearing, we will try
7 to determine which of the two is really just more not only
8 feasible but is better suited for the facts and
9 circumstances presented in this case.

10 It might be a situation where, based on the
11 record of the two- or three-day hearing, the parties would
12 like to reflect on what was testified to and file what is
13 known as a closing brief instead of making a closing
14 argument kind of in ad hoc fashion right after everything
15 has happened.

16 So, again, we will review that and do that at
17 the end. But don't be surprised, if in this particular
18 case, if closing briefs are the way we go, because, like I
19 said, after a two- or three-day hearing, that's probably
20 going to be a more efficient manner for things than if
21 this was just a one- or two- or three-hour hearing. It is
22 just my experience that it is just more difficult to sum
23 up your situation over the course of three and four days
24 than it is to take time and reflect and read what was,
25 read the record and make your points in written form.

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1 That's essentially the overview. Then at the
2 conclusion of the case, the matter will be taken under
3 advisement. And then at that point, once either closing
4 statements are made or once those closing briefs are
5 submitted, I will take the record and those closing
6 briefs, if submitted, and write what is known as a
7 recommended opinion and order.

8 At that point those will be disbursed
9 generally, two weeks prior to the open meeting at which it
10 will be heard. The parties will then have time to review
11 and file what are known as exceptions. So if there is
12 something incorrect factually or if there is a conclusion
13 that is made that you don't agree with, you have time to
14 file those exceptions with the Commission.

15 At that time the Commissioners will review the
16 recommended opinion and order and exceptions, if any, and
17 they will make their own decision. They can agree with
18 the recommended opinion and order in total, they can amend
19 it in any fashion they want or they can disagree with it.

20 So essentially the recommended opinion and
21 order is just that, a recommendation. And it is up to the
22 five sitting Commissioners to determine what remedy or
23 what the result of this case should be, whether the
24 complainants will be found in violation; whether the Staff
25 has not proven their case; if there are violations, what

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1 penalties should occur, if any. All those decisions will
2 be made by the Commissioners. But the recommended opinion
3 and order will give you sort of a blueprint, so to speak,
4 of the facts and conclusion of the law. And at that time
5 I said you will have an opportunity to file exceptions.

6 Does everybody understand that?

7 MR. JOHNSON: Yes.

8 ALJ DION: I am getting head nods. Nobody.
9 So that's the basic formula we are going to follow.

10 Mr. Wetherald?

11 MR. WETHERALD: I raised my hand.

12 ALJ DION: That's fine. Go ahead.

13 MR. WETHERALD: I don't recall hearing you, on
14 exceptions, is there like a time line for that?

15 ALJ DION: There is. What will happen is you
16 will get a cover letter.

17 MR. WETHERALD: Oh, okay.

18 ALJ DION: It will state this recommended
19 opinion and order will be heard at, and I will make up a
20 time, that November 25th, which is probably Thanksgiving
21 this year, but November 25th is the open meeting; you are
22 to file all your exceptions, and it will give you a date.
23 You have to file them by November 20th or, you know, the
24 15th.

25 I am not positive what the lead time on that

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1 is exactly. But with the recommended opinion and order
2 you will receive a cover letter that will tell you both
3 the open meeting and deadline date.

4 Okay. All right. So hopefully, covering
5 that, we won't have to cover it at the end. But if you do
6 have any questions, go ahead.

7 Before I start today, do you have any motions?
8 Staff, any motions?

9 MR. HORTON: No, I have no motions.

10 ALJ DION: I know I have one with the LLP.
11 When we were here on October 7th, the LLP had filed a
12 motion to dismiss that I had denied on the record. And so
13 I wanted to affirm that that is denied and make sure that,
14 well, essentially what that did, it, I believe it was the
15 motion to dismiss from the second amended, or, excuse me,
16 from the amended complaint.

17 Is that correct, Mr. Crockett?

18 MR. CROCKETT: Yes, Your Honor. It was a
19 motion to dismiss Staff's first amended complaint. And it
20 was all five counts.

21 And I was here on October the 7th and I do
22 remember the discussion. And I do remember Your Honor
23 discussing whether or not you would dismiss Count Five
24 which had to do with contempt of the Commission and
25 violation of Commission orders and decisions.

1 ALJ DION: Yes. I believe that discussion,
2 and I think Mr. Horton had agreed, that that particular
3 count didn't apply to the LLP.

4 Is that correct, Mr. Horton?

5 MR. HORTON: Yes, your recollection is
6 correct, Your Honor.

7 ALJ DION: So I am assuming thereby there will
8 be no evidence in this hearing that, you know, a
9 recommended opinion and order will take care of that count
10 against your client.

11 Mr. Wetherald, were there any other motions?

12 MR. JOHNSON: Your Honor, this is Mr. Johnson.
13 I believe my motion to dismiss on the amended complaint is
14 still pending. That's my understanding. It wasn't firmly
15 decided in last week's hearing. Is that correct?

16 ALJ DION: I don't believe that's correct. I
17 think I denied it. But when I get to you, we can
18 certainly discuss that.

19 Mr. Crockett, were there any other motions you
20 had?

21 MR. CROCKETT: Nothing else, Your Honor.

22 ALJ DION: Mr. Wetherald, any motions you want
23 to make before we started today?

24 MR. WETHERALD: No.

25 ALJ DION: No.

1 Mr. Tricamo, any motions before we started
2 today?

3 MR. TRICAMO: No motions.

4 ALJ DION: Mr. Johnson, I believe that I, not
5 only believe, I am fairly sure that I denied your motion
6 because we had the discussion about the definition of
7 principals, additionally the definition of alter ego, all
8 of those things.

9 However, I had also indicated to Staff that I
10 intended to see a nexus or it would appear to me that a
11 nexus needs to be established. Additionally I am sure you
12 will have information for me to consider when it is your
13 time, but at this point, just based upon the facts, there
14 is a set of facts that are not settled. And so based upon
15 that I did not grant that motion to dismiss.

16 MR. JOHNSON: I am not sure why you denied the
17 motion of dismissal, but I understand where you are coming
18 from.

19 ALJ DION: Honestly I would have to check the
20 record to see if I did or didn't. So much has happened in
21 this case it certainly could have slipped by.

22 MR. JOHNSON: I can appreciate that.

23 ALJ DION: Opening statement. Staff, do you
24 have any opening statements?

25 MR. HORTON: Your Honor, Staff believes the

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1 facts will show that the counts as outlined in the amended
2 complaint can all be proven certainly by a preponderance
3 of the evidence. We will show that The Phone Company of
4 Arizona provided service in Arizona, that The Phone
5 Company of Arizona provided that service without a CC&N on
6 record with the Commission, without a filed tariff, and
7 without a bond.

8 Staff will also show that the CC&N that is
9 purported to be held by Phone Company Management Group
10 should be revoked. Phone Company Management Group has
11 shown that it is not a fit and proper entity to provide
12 services in Arizona, as evidenced by its conduct in
13 Arizona itself as well as its conduct in other
14 jurisdictions.

15 There may be some question about why not just
16 let them cancel their CC&N since they have an application
17 pending. It is Staff's belief that there is, there is a
18 big difference between a revocation and allowing them to
19 cancel a CC&N. We believe that the Commission should
20 speak to their not being a fit and proper entity through
21 the revocation of that CC&N, which would require Phone
22 Company Management Group and its principals in the future
23 to disclose to any state commission that may ask when they
24 are applying for a CCN that they have in fact had a CC&N
25 revoked by the State of Arizona.

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1 The factors that will go to showing that they
2 are not a fit and proper entity, their lack of financial
3 capability, this will be evidenced in many ways, including
4 their refusal to pay amounts due to Qwest, their lack of
5 technical capability and their lack of management
6 capability, all of which will be demonstrated by records
7 and in fact by their own answer to data requests that have
8 been propounded by Staff.

9 All of these things have worked to cause harm
10 to Arizona customers. There were -- it is a question of
11 how many customers were actually harmed. We have
12 differing numbers on how many people actually were served
13 by The Phone Company Management Group or Phone Company of
14 Arizona. However, they were bounced around pretty badly
15 in the end by the actions of the provider. And we have
16 numerous complaints that have been filed by consumers,
17 frustrated consumers unable to contact their provider and
18 unable to make changes to their service that they should
19 have been able to make.

20 We will also show that The Phone Company
21 Management Group, Phone Company of Arizona, has been in
22 contempt of this Commission, has blatantly ignored and,
23 through their own statements and writings, have shown
24 contempt of the Commission in refusal to follow the orders
25 of this Commission.

1 We will also show that there has been a
2 blurring of the lines of the entities and the principals
3 involved with those entities. We will be able to show
4 that it is impossible to distinguish between the entity
5 itself and the principals of that entity and what actions
6 were taken to benefit the entity. In many cases it will
7 be made quite clear that the actions taken were actually
8 to the benefit of the principal and not to the entity.
9 And we will show that there would be an injustice done by
10 recognizing the entity, the LLC entity, in that, because
11 there would be such a share in the blame between all the
12 principals of the entity which actually should not be
13 shared, they should be focused on Mr. Wetherald.
14 Mr. Wetherald has made any decisions that are clearly made
15 to his benefit and it would not be just for all to share
16 in the blame for his decisions that were made for his
17 benefit.

18 Staff in the end thinks the proper relief in
19 this case is a revocation of all CC&Ns involved and any
20 fines that the Bench feels are appropriate for their
21 actions in contempt of this body.

22 That's all.

23 ALJ DION: Mr. Crockett, an opening statement,
24 sir?

25 MR. CROCKETT: Yes, Your Honor.

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1 This case is not complicated when it comes to
2 The Phone Company of Arizona, LLP. The investors in The
3 Phone Company, LLP intended to enter the competitive
4 telecommunications market in Arizona. As everyone in this
5 room knows that did not happen. I do not intend to
6 address the reasons why The Phone Company of LLP did not
7 accomplish its objective. I do not need to. Instead I
8 will address the complete lack of evidence that The Phone
9 Company of Arizona, LLP has taken actions that would make
10 it a public service corporation and subject to the
11 Commission's jurisdiction and the complete lack of
12 evidence that The Phone Company of Arizona, LLP is
13 responsible in any way for the misconduct alleged in
14 Staff's amended complaint.

15 The evidence will show that The Phone Company
16 Management Group, LLC, previously known as LiveWireNet of
17 Arizona, LLC, began providing resold local exchange
18 service and resold long-distance service sometime around
19 April 2002 under the name The Phone Company of Arizona
20 pursuant to a certificate of convenience and necessity
21 issued by the Commission under Decision No. 63382. That
22 is the CCN that remains in effect today, although Staff is
23 urging its revocation, and The Phone Company Management
24 Group, LLC has filed to voluntary surrender the CCN.

25 The evidence will show that The Phone Company

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1 Management Group, LLC continued providing resold local
2 exchange service and long-distance service under the name
3 The Phone Company of Arizona from approximately April 2002
4 until sometime in the spring of 2003 when the customers of
5 The Phone Company Management Group, LLC were transitioned
6 to Qwest or other providers. Thus, it is The Phone
7 Company Management Group, LLC that has operated under the
8 name of Phone Company of Arizona at all material times and
9 not The Phone Company of Arizona, LLP.

10 The evidence will show that The Phone Company
11 of Arizona, LLP is an Arizona limited liability company
12 that was formed to provide competitive local exchange
13 carrier services and other telecommunications service in
14 the state of Arizona. However, The Phone Company of
15 Arizona, LLP has never applied for a certificate of
16 convenience and necessity.

17 The evidence will show that The Phone Company
18 of Arizona, LLP never offered telephone service, solicited
19 customers for telephone service through advertisements,
20 personal contacts, or other means, signed up customers, or
21 took any other actions that would constitute providing
22 telecommunications services.

23 The evidence will show that The Phone Company
24 of Arizona, LLP does not now nor ever controlled any
25 interest in LiveWireNet of Arizona, LLC; The Phone Company

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1 Management Group, LLC or On Systems Technology, LLC, which
2 are all respondents in this proceeding.

3 The evidence will show that The Phone Company
4 of Arizona, LLP does not now -- I am sorry. The LLP was
5 briefly a partner with On Systems Technologies, LLC in a
6 short-lived joint venture called The Phone Company of
7 Arizona Joint Venture.

8 While an application was filed in the name of
9 The Phone Company of Arizona Joint Venture by attorney
10 Michael Glaser on July 31, 2002, in Docket
11 T-04125A-02-0577, that application was withdrawn by
12 Mr. Glaser on October 4, 2002 without a CC&N being issued.
13 The Phone Company of Arizona Joint Venture has not
14 provided telecommunications services and Staff has not
15 provided any credible evidence to the contrary.

16 The evidence will show that The Phone Company
17 of Arizona, LLP has cooperated fully in Staff's
18 investigation in this Docket, responding to data requests,
19 attending numerous scheduling conferences and now this
20 hearing providing prefiled testimony and providing other
21 information requested by Staff. The evidence will show
22 that The Phone Company of Arizona, LLP has not violated
23 any statute, rule, decision or order of the Commission and
24 is not guilty of the contemptuous misconduct alleged in
25 the complaint.

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1 Staff has alleged The Phone Company of
2 Arizona, LLP subjected itself to the Commission's
3 jurisdiction by participating in the provision of
4 telecommunication services as a public service corporation
5 through The Phone Company of Arizona Joint Venture,
6 although it is not clear to me -- it does not appear that
7 Staff believes The Phone Company of Arizona, LLP itself
8 was involved in providing telecommunication services, but
9 rather that The Phone Company of Arizona, LLP is subject
10 to the Commission's jurisdiction as a public service
11 corporation by virtue of its ownership interest in The
12 Phone Company of Arizona Joint Venture which is now
13 defunct. There are at least two problems with Staff's
14 argument.

15 First, Staff will not be able to establish
16 that The Phone Company of Arizona Joint Venture was
17 operating as a public service corporation. The evidence
18 will show that at all material times the telephone service
19 which is the subject of the amended complaint was provided
20 by The Phone Company Management Group, LLC doing business
21 as The Phone Company of Arizona under the CCN issued in
22 Decision 63382.

23 Second, even assuming that The Phone Company
24 of Arizona Joint Venture was operating as a public service
25 corporation, Staff cannot identify a single case where an

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1 investor in a public service corporation was held to be a
2 public service corporation without that investor taking
3 some type of active role in provisioning utility service.
4 Staff has not identified one single action taken by The
5 Phone Company of Arizona, LLP that constitutes the
6 provision of telecommunications service.

7 In the end, we are confident that Your Honor
8 will find Phone Company of Arizona, LLP is not a public
9 service corporation and that the allegations contained in
10 Staff's amended complaint are without merit as pertaining
11 to The Phone Company of Arizona, LLP and that any relief
12 sought by Staff against The Phone Company of Arizona, LLP
13 should be denied.

14 Thank you.

15 ALJ DION: Thank you. Mr. Crockett, just, you
16 just said that the LLP had not made an application for a
17 CCN, is that correct?

18 MR. CROCKETT: That is correct.

19 ALJ DION: Okay. There is however, I
20 understand, an application that involves some of the
21 members of the LLP, Premier Telephone, that is correct?

22 MR. CROCKETT: Your Honor, no, it is not
23 correct.

24 ALJ DION: Okay.

25 MR. CROCKETT: The members or partners of The

1 Phone Company of Arizona, LLP do not have an interest in
2 Premier Communications. And Mr. Credle will be here today
3 and perhaps Your Honor can discuss that with him. That
4 was a plan at one point in time that never came to
5 fruition.

6 ALJ DION: I remember there was talk about
7 Premier earlier this summer, the other part of the, part
8 of the summer. So I wanted to make sure that was correct.
9 Thank you. And we will deal that with when Mr. Credle
10 comes up.

11 Mr. Wetherald, sir.

12 MR. WETHERALD: As I was trying to, and
13 perhaps it is best in the opening statement, would be to
14 show the movie The Crucible. This proceeding is not about
15 truth or justice; this is an inquisition. Probably the
16 most astonishing thing about this whole thing is the
17 overwhelming lack of credible evidence that anything was
18 done, but most importantly the total lack of any legal
19 standing in most of these instances to enact. What is
20 going to be shown is that the damage to the consumers
21 wasn't caused by me. It was caused by the witch hunt.

22 Earlier, Your Honor, I put my motion to defend
23 myself to express my unwound anger at some of the
24 partners. And as I started thinking about it, that,
25 regardless of what they did, what they really did was ask

1 the Commission, or the Commission Staff rather, to push
2 the rock over the hill. It was the Commission Staff that
3 pushed the rock, not the partners.

4 At all times they had both a duty and an
5 obligation to the consumers, to this Commission, to other
6 people to make sure that what they were doing and saying
7 was both factually and legally correct and that they had
8 the authority to act on what they were doing, which they
9 never did.

10 As a matter of fact, the quagmire and the
11 result at the end of this that hurt consumers was not
12 because I did something wrong, it was because this
13 Commission and this Staff violated their own rules in the
14 way they went about doing it. And now they want to point
15 the finger at me and say you are the bad guy.

16 Well, gee. Stop, think before you act. One
17 of the fundamentals of any playground: Don't run where
18 you can't see.

19 I have been adjudged. I have been found to be
20 unbelievable. I have been accused of all sorts of things
21 before there has been any evidence in this proceeding even
22 presented.

23 The most amazing thing is that, in all of this
24 foray of things, it boils down to, even when you read
25 their testimony, even when you look at what they say, it

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1 has less to do with what I did than my bad press. This is
2 about chopping the head of a man with a past supposedly
3 before we find out whether any of it is even true.

4 To date, in looking through this stuff, what
5 is most amazing to me, and you had mentioned that, you
6 know, generally speaking you don't have hearsay evidence,
7 90 percent of the stuff that the Staff puts on the table
8 doesn't even qualify as hearsay evidence because this
9 isn't even secondhand. It is third and fourth hand.

10 How do I cross-examine somebody who told
11 somebody who told somebody who told somebody else about
12 whether or not that accusation is either valid or true? I
13 can't. But yet these guys hold it up like it is the Holy
14 Grail and want to purport it is true.

15 Almost none of the stuff brought in Staff's
16 action in most of these instances would be allowed in any
17 other credible court. But here it is held up as a Holy
18 Grail and waved around and say, see, it must be. Somebody
19 wrote a bad article about them. Somebody accused them of
20 something.

21 But yet this Staff has had plenty of
22 opportunity and time to find one document from any court
23 anywhere that has found that I have done anything illegal
24 or wrong. They can't produce it. So instead of relying
25 on the facts, they rely on the allegations.

1 I thought in this country that I had a right
2 to be presumed innocent until I was found guilty.
3 Accusations are not proof. They are accusations. Anybody
4 can make them and assert them against anybody at any time.
5 It doesn't make them true. And I think it is highly
6 improper, and this will probably happen in closing briefs,
7 or whatever, for this Staff to be allowed to bring in
8 outside information and jurisdictions where those
9 jurisdictions have yet to rule on whether I did anything
10 wrong or improper and use it to convict me here. If that
11 was that big of an issue and it was that important, then
12 it would have been more prudent for them to wait to find
13 out whether or not those accusations were borne out to be
14 true. They didn't. And it is improper for them to be
15 used.

16 What is going to be shown is that this Staff
17 at all times throughout this proceeding had a total lack
18 and disregard for the law, for their own rules or even
19 sound investigative technique. It is not about truth;
20 this is about chopping the head off. This is not about
21 discovery; this is an inquisition.

22 That's it.

23 ALJ DION: Okay. Just to address something,
24 Mr. Wetherald. When I said that about hearsay and kind of
25 court, I was just setting the table. That doesn't mean

1 you cannot object and I wouldn't consider the objection,
2 especially in the case of double or triple hearsay. Do
3 you understand that?

4 MR. WETHERALD: I do. But that kind of puts
5 me in a quagmire because, frankly, I would like to show by
6 what they produced just how ridiculous and, if I struck
7 it, I wouldn't be able to do that.

8 ALJ DION: That's your choice. But I wanted
9 to, I just wanted to clear that, when I said that, I was
10 just setting sort of the playing field and that doesn't
11 mean you can't say "I object." You can object during the
12 course of the questioning. And then I will rule on that.

13 So I was not trying to preemptively strike any
14 objections from occurring in this hearing. I haven't done
15 that, have I, to you?

16 MR. WETHERALD: No, you have not.

17 ALJ DION: You also understand what I have
18 before me is a complaint and that nothing has been shown
19 to me to date regarding this?

20 There has been no evidence taken. There have
21 been no exhibits entered into evidence. And so, as far as
22 I am concerned, until that happens, until evidence is
23 presented, until exhibits are presented and until it is
24 beyond a preponderance of evidence, that you sit there as
25 you said before innocent until proven guilty. Do you

1 understand that?

2 There has been nothing presented to me so far.
3 I understand what you are, what you were driving at during
4 your opening statement. But what I wanted to make
5 absolutely clear to you, nothing has been shown to me in a
6 form of sworn statement, that there have been
7 depositions -- excuse me. There has been prefiled
8 testimony but nobody has sworn into it. So, although I
9 have read it, I am not considering it until they tell me
10 that that is true. And then I will determine, based upon
11 what they present and what you present, how much weight to
12 give it.

13 Do you understand that?

14 MR. WETHERALD: I do. I do.

15 ALJ DION: Okay. I just wanted that
16 abundantly clear, that I am in no way, shape or form
17 swayed by what someone wrote in an article or what
18 somebody filed in a motion. Those tend be adversarial on
19 purpose and they are situations where I will rule on
20 motions based upon some of the things that are presented
21 there. But that does not affect what happens in the
22 hearing.

23 This is the evidentiary portion of this
24 proceeding. And this is where everything starts. So
25 everybody is at a clean slate and it has to be proven to

1 me before I will even recommend it to the Commission.

2 Is that clear?

3 MR. WETHERALD: It is. I do have a concern.

4 I mean, is this even the proper place?

5 ALJ DION: I want to address --

6 MR. WETHERALD: I do have a concern, Your
7 Honor, that there, there has been a lot of emotion in this
8 case thus far. And one of my concerns, to be perfectly
9 honest with you, is that the statements have been made,
10 even by Your Honor, about my credibility. There has been
11 a presumption that, before I even get out the door, I am
12 lying or trying to cover up or trying to hide things.

13 Those issues are different than whether or not
14 I am cooperative. And I guess I want to make sure that
15 people understand or recognize that the veracity of my
16 statements should never be confused with whether or not
17 they feel I have complied with something. And I feel that
18 I have been in some ways preadjudged by even your own
19 statements as to my credibility before anybody has shown
20 any evidence that I am unbelievable.

21 ALJ DION: And what I was trying to address is
22 that, in situations where I am ruling on, where motions
23 were ruled on by this Commission, essentially that, you
24 know, that can happen and that you are presented two sides
25 and you pick one over the other. And it may be a

1 credibility issue. It may be a bias issue. It may be
2 something else. But in that situation, you know, the
3 decision needs to be made and you move on to those
4 motions.

5 I am prepared today to go forward with this
6 hearing, not considering any of those things, of those
7 motions, any of that. That is not my concern. And I am
8 able to move ahead. I don't think even it rose to that
9 level to me personally, or as sitting up here as the
10 judge, trier of fact and law.

11 But I wanted to make sure you are comfortable,
12 Mr. Wetherald. That's why I wanted to take time here and
13 address, when you say proven guilty, or innocent until
14 proven guilty, I wanted to make it abundantly clear that
15 Staff has not shown me anything about you, your actions,
16 Mr. Tricamo, Mr. Johnson's or the LLP. Nothing is before
17 me. And this is the stage in which it is time for people
18 kind of to put up or shut up so to speak and enter the
19 evidence and let me base my decision on those facts and
20 laws.

21 And so I want you to be assured that I don't
22 have, I don't have any of that. And if you have taken the
23 stand and you are sworn in, you will be treated as any
24 other witness. You won't receive any special treatment
25 but you will be, you will be treated in the same way as

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1 everyone else in this particular case and that, in your
2 being sworn in and telling your side of the story, if a
3 party contradicts that with other evidence, then I
4 certainly will consider that, however I don't have any
5 opinions and bias about you, your companies, Mr. Tricamo
6 or Mr. Johnson, at this point about the hearing at all.
7 But I wanted to make sure that you were comfortable with
8 that as well.

9 MR. WETHERALD: Well, let's say that I am
10 willing to give Your Honor the benefit of the doubt. I
11 think you are sincere. I do have concerns. But I also
12 think it is, you know, time to get this thing done.

13 ALJ DION: Okay. I wanted to give you that
14 opportunity. So you have had --

15 MR. WETHERALD: Okay.

16 ALJ DION: And you are willing to move on?

17 MR. WETHERALD: Yes, I am.

18 ALJ DION: Mr. Tricamo, would you pull the
19 microphone closer? Do you have an opening statement?

20 MR. TRICAMO: I do not.

21 ALJ DION: I wanted to make sure of something
22 with you, sir.

23 I had sent a couple of procedural orders. Did
24 you receive those, Mr. Tricamo?

25 MR. TRICAMO: Yes, I did.

1 ALJ DION: Go ahead and pull up the
2 microphone, ask you a couple questions.

3 Were you not able to attend the prehearing
4 conferences that we had in the last couple weeks?

5 MR. WETHERALD: No, I wasn't. I wasn't aware
6 of them.

7 ALJ DION: Okay. I am just trying to find out
8 your address so that I can make sure, because I issued a
9 couple of procedural orders to attend the prehearing on
10 the 7th, and then we had another one last week. Again,
11 you didn't show up.

12 I don't have, don't take it personally, I
13 don't have a feeling one way or another on that. I am
14 just trying to make sure that you are getting all the
15 information. So can I have your address for the record,
16 please.

17 MR. TRICAMO: You have my current address,
18 6888 South Yukon Court, Littleton, Colorado 80128

19 ALJ DION: So you did receive those procedural
20 orders that we sent out about having those prehearings?

21 MR. TRICAMO: I have received several things
22 but I never got notice of a hearing, no.

23 ALJ DION: We had a prehearing on the 7th and
24 we had another prehearing just last week.

25 MR. TRICAMO: I was informed last week after

1 the hearing that I should be here.

2 ALJ DION: All right. Again, I wasn't --

3 MR. TRICAMO: That wasn't mail. I didn't get
4 that by mail.

5 ALJ DION: I wanted to double-check that. I
6 had that address on my service list and it should have
7 been sent to you. I wanted to make sure I had it in the
8 record so that, when the recommended opinion and order is
9 mailed, it is on the address you stated. So
10 theoretically, if it is mailed, it gets to you.

11 MR. TRICAMO: Since June I have noticed I have
12 been getting a lot of mail. But I don't see my name on
13 the distribution list on the back of a lot of these
14 things.

15 ALJ DION: And I think part of the dilemma on
16 that, Mr. Tricamo, is that at one point you were
17 represented and communications might have gone to the
18 attorney instead of the individuals. I now believe I have
19 your correct address, you stated it to me on the record,
20 so I will be able to send that to you.

21 MR. TRICAMO: And the Staff had sent me
22 everything previous as well.

23 ALJ DION: Thank you. I appreciate that.
24 Mr. Johnson, opening statement, sir?

25 MR. JOHNSON: Yes. With your permission, I

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1 would like to defer to making an opening statement later
2 in the proceedings.

3 ALJ DION: Absolutely. Fine.

4 With that, we will move to the testimony in
5 this case. I would have Staff call their first witness.

6 MR. HORTON: Your Honor, Staff calls John
7 Bostwick.

8

9 JOHN BOSTWICK,
10 a witness herein, having been first duly sworn by the
11 Certified Court Reporter to speak the truth and nothing
12 but the truth, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. HORTON:

16 Q. Good morning, Mr. Bostwick.

17 A. Good morning.

18 Q. Would you please identify yourself for the
19 record.

20 A. My name is John Bostwick.

21 Q. And where do you work, Mr. Bostwick?

22 A. I work for the Arizona Corporation Commission.

23 Q. And what are your responsibilities at the
24 Commission?

25 A. My title is Administrative Service Officer II.

1 The bulk of my responsibilities center around reviewing
2 applications for CC&Ns.

3 Q. And in the scope of your responsibilities as
4 an Administrative Service Officer II for the Commission
5 did you prepare testimony in support of Staff's complaint
6 in this case?

7 A. Yes, I did.

8 Q. And is that testimony before you and marked
9 S-1?

10 A. That's correct.

11 Q. And do you adopt that direct written testimony
12 as your testimony in this case today?

13 A. Yes, I do.

14 Q. Do you have any changes or additions that you
15 need to make to that testimony to update it?

16 A. Not at this time.

17 MR. HORTON: Okay. Thank you. Your Honor,
18 the witness is available for cross-examination.

19 ALJ DION: Okay.

20 MR. HORTON: Staff moves S-1, Your Honor.

21 ALJ DION: Let's go ahead and handle that
22 first.

23 Does anyone have an objection to S-1 being
24 entered which is the sworn statement of Mr. Bostwick?

25 MR. CROCKETT: No, Your Honor, not on behalf

1 of the Phone Company Arizona, LLP.

2 ALJ DION: Mr. Wetherald?

3 MR. WETHERALD: No.

4 ALJ DION: Mr. Tricamo?

5 MR. TRICAMO: Is there a copy of that
6 available?

7 ALJ DION: And, Mr. Tricamo, that is the,
8 that's the copy for the court reporter. So...

9 MR. HORTON: Your Honor, let's do this --

10 ALJ DION: Do you have another copy?

11 MR. HORTON: Let me provide a copy.

12 ALJ DION: At least this way you will be able
13 to mark it up a little bit, Mr. Tricamo.

14 MR. TRICAMO: Thank you.

15 MR. HORTON: Sure.

16 ALJ DION: Now, do you have an objection to
17 that, Mr. Tricamo?

18 MR. TRICAMO: No.

19 ALJ DION: Mr. Johnson?

20 MR. JOHNSON: No objection, Your Honor.

21 ALJ DION: S-1 will be admitted into the
22 record.

23 I think the most expedient way to handle this
24 is, in this particular case, is to have Mr. Wetherald's,
25 Mr. Tricamo's, Mr. Johnson's cross-examination first and

1 then the LLP's cross-examination. I think that the bulk
2 of the questions are going to come from that side and I
3 would like to try to move through that part of this case
4 before we hit our first break, which will be at 10:30, and
5 then the lunch hour. I just think that would be a better
6 way to do that. Why don't we proceed.

7 Are you prepared, Mr. Wetherald?

8 MR. WETHERALD: Yes, I am.

9 ALJ DION: I just want to let you know, if you
10 are still questioning Mr. Bostwick around 12:30, we will
11 try and find a good stopping point.

12 This goes for any of the parties
13 cross-examining if Mr. Wetherald finishes before then.
14 And we will take our first break in the morning. We will
15 take our lunch break around noon and then we will continue
16 throughout the rest of the day.

17 So, Mr. Wetherald, sir, your witness.

18 MR. WETHERALD: Good. I guess I can keep
19 seated?

20 ALJ DION: You can keep seated or stand up,
21 whichever your preference, whichever you are more
22 comfortable.

23 MR. WETHERALD: We will start here. I kind of
24 tend to like to pace, so maybe sitting will do a better
25 job.

1 CROSS-EXAMINATION

2 BY MR. WETHERALD:

3 Q. Good morning, Mr. Bostwick.

4 A. Good morning.

5 Q. Looking through your testimony and your
6 education and stuff, it looks like you have a breadth of
7 experience related at least to regulatory matters and some
8 business things.

9 Could you describe to me specifically any
10 business-related education or experience that you have
11 had?

12 A. The bulk of my business has been in the
13 utility business, working with gas, working with electric,
14 water, telephones, probably total neighborhood of about
15 25 years.

16 Q. Have you ever taken any classes on formation
17 of businesses?

18 A. I don't recall that as a title of a course,
19 formation of business.

20 Q. Something related to formation of businesses?

21 A. Development, starting the business, reading
22 books of that nature.

23 Q. Okay. Have you ever started a business?

24 A. Yes.

25 Q. What kind of business?

1 A. Real estate.

2 Q. Was it a corporation, limited liability?

3 A. No, just a sole proprietor.

4 Q. Sole proprietor?

5 A. That's correct.

6 Q. So by that statement I am assuming you
7 understand the difference between a sole proprietorship
8 and corporation?

9 A. I do in the sense of those two subjects, yes.

10 Q. What is the difference between a sole
11 proprietorship and a corporation?

12 A. Well, a corporation you have somewhat, the
13 liability is not squarely on the management in terms of --
14 or sole proprietorship is completely liable for all the
15 bills and everything. You have shareholders on the other
16 side and the corporation.

17 Q. Isn't it possible to -- we will come back to
18 that in a minute.

19 Beyond just liability issues, are there other
20 distinctions between a corporation and a sole
21 proprietorship?

22 A. Well, I would think with the corporation you
23 would have to be registered with a state to do business
24 within the state.

25 Q. You mentioned earlier that in corporations

1 there are shareholders. In your experience or in your
2 knowledge is it possible for a corporation to have just
3 one shareholder?

4 A. I suppose it is.

5 Q. Is it fair to say that you really aren't sure
6 or have personal knowledge or have experience that you
7 could speak definitively as to or with any expertise or
8 clarity in regards to corporate structures and to what
9 purpose they might achieve or not achieve?

10 A. That would be how they are set up. They could
11 vary state to state. They can vary from different types
12 of arrangements.

13 Q. I am not even talking about that. I am
14 talking about simply why or how a corporate entity exists.

15 A. Well, hopefully it exists for the purpose of
16 making money for the shareholders.

17 Q. Could they exist for other reasons?

18 A. Some may be benevolent, charity.

19 Q. Do you have any legal training?

20 A. I am not a lawyer.

21 Q. I didn't ask you if you are a lawyer. I asked
22 if you have any legal training.

23 A. I have taken business law. That's about it.

24 Q. Have you taken any other courses on law?

25 A. No, not to my knowledge.

1 Q. In your course, or in the exercise of your
2 duties for the Commission, do you deal with legal matters?

3 A. No. I usually refer those matters to Staff,
4 legal Staff.

5 Q. Do you feel, Mr. Bostwick, that you have an
6 obligation before you make an assertion and testimony to
7 make sure that it is true and accurate?

8 A. Yes, I do.

9 Q. And in your testimony in this case, you did
10 that, correct?

11 A. To the best of my knowledge, I did, yes.

12 Q. Mr. Bostwick, if you turn with me to your
13 testimony, and we will start with one Count One, if you
14 will turn to page 5.

15 In Count One you are basically asserting, and
16 I just want to clarify this, that services were provided
17 in Arizona without a CCN, is that correct, or being
18 properly licensed?

19 I am not on this page yet. I am just covering
20 some foundation?

21 A. You said page 5, so...

22 Go ahead. I am sorry. Repeat the question.

23 Q. In Count One basically assertions were being
24 made that services were provided without a proper license
25 or a certificate of convenience, is that correct?

1 A. Yes, Phone Company of Arizona does.

2 Q. I am not going to get to the Phone Company of
3 Arizona. Are you contending from your testimony, I am
4 assuming you are, that none of the entities that are --
5 and can we, maybe just to clarify this, we are really
6 talking about the possibility of three different entities
7 here, aren't we?

8 A. Well, I am going by the caption.

9 Q. LLP --

10 A. I am going by the caption. There are five
11 entities listed.

12 Q. Forget names. We are talking about who would
13 be providing services. I mean that is really an option
14 down to a choice of three, isn't it? The LLP, The Phone
15 Company Management Group or LiveWireNet or the Joint
16 Venture?

17 A. Well, I am looking at five companies on that.

18 Q. Are you contending any of the other five were
19 offering services?

20 A. The one I know that is offering services,
21 Phone Company Management Group, LLC doing business as The
22 Phone Company.

23 Q. Well, we will get to what they are doing
24 business as in a minute.

25 So your contention is Phone Company Management

1 Group is not certified or licensed, correct?

2 A. No. Phone Company Management Group, LLC doing
3 business as The Phone Company is certificated in the state
4 of Arizona to do business.

5 Q. That's not what your direct testimony says.
6 So to do business in the certificate -- to do business in
7 Arizona as regulated telecommunications services --

8 A. Well, the CCN is awarded to The Phone Company
9 Management Group, LLC doing business as The Phone Company.

10 Q. So are you saying, if it was shown that The
11 Phone Company Management Group was the entity offering
12 services, that they would have had the requisite authority
13 to do so?

14 A. They were certificated, yes. They could
15 provide service.

16 Q. So you are basically saying that your
17 statements in your testimony where you conclude -- I am --
18 we will go to a more definitive statement so that we can
19 get there.

20 Turn with me to page 10 of your testimony. If
21 you would start with question one, would you please read
22 that?

23 A. That's line 2 on page 10, correct?

24 Q. I meant the first question. I am sorry.

25 A. Okay. Do any of the respondents to this

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1 complaint possess a CC&N that will allow them to do
2 business as The Phone Company of Arizona or the Telephone
3 Company of Arizona?

4 Q. And what was your answer?

5 A. No.

6 Q. But yet you just said that Phone Company
7 Management Group does have a CC&N. So I am a little
8 confused. Do they or don't they?

9 A. I said The Phone Company Management Group, LLC
10 doing business as The Phone Company has a CC&N.

11 Q. I am going to come back to that in just a
12 minute.

13 Go back to page 6 and we will start at line 6
14 of your testimony. Are you there?

15 A. What are we talking --

16 Q. Page 6 of your testimony, line 6.

17 A. Line what?

18 Q. Line 6.

19 A. Do you want me to read the question?

20 Q. Yes, read the question.

21 A. Since that time, what has Staff determined to
22 be the status of The Phone Company Management Group, LLC,
23 doing business as The Phone Company?

24 Q. Please read your answer.

25 A. My answer is: According to statements by the

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1 management for LiveWireNet of Arizona, LLC, doing business
2 as LiveWireNet, there was a restructure in the Articles of
3 Management of LiveWireNet of Arizona, LLC, doing business
4 as LiveWireNet prior to filing a name change with the
5 Corporations Division of the Arizona Corporation
6 Commission and subsequently with Docket Control of the
7 Arizona Corporation Commission. This restructuring to the
8 Articles of Management constituted a new legal entity
9 which would have necessitated the transfer of the
10 certificate of the convenience and necessity from
11 LiveWireNet of Arizona, LLC, doing business as LiveWireNet
12 to The Phone Company Management Group, LLC, d/b/a The
13 Phone Company.

14 Q. I am a little confused by this. I mean this
15 would lead me to believe that The Phone Company Management
16 Group was required to transfer a VSH before it would be
17 effective and able for them to use?

18 A. Well, my understanding is that you transfer --
19 you requested a transfer, name change from LiveWireNet of
20 Arizona, LLC doing business as LiveWireNet, and you sent
21 to this Commission information plus a tariff that said we
22 were going to change the name to The Phone Company
23 Management Group, LLC doing business as The Phone Company.
24 According to Commission records, that has been done.

25 Q. It has been done. I am not disputing that.

1 Does that necessitate a transfer of a CC&N?

2 A. The LiveWireNet name change created -- it is
3 the same, it is the same CC&N. It just moved from this
4 one to that entity.

5 Q. But earlier in your testimony, same thing. I
6 mean I am just very confused here.

7 So what you are saying is, and maybe we don't
8 need to -- cut this short and get to the second place.

9 What you are saying is The Phone Company
10 Management Group, LLC had a valid CC&N and tariff for the
11 Commission to offer services in the state of Arizona?

12 A. I am saying that The Phone Company Management
13 Group, LLC doing business as The Phone Company has a valid
14 CC&N.

15 Q. Okay. Let's talk a little bit about that.

16 And I am assuming by your testimony and
17 earlier statements that you have done an adequate due
18 diligence to test the veracity of whether or not that
19 statement is either factually or legally correct, have
20 you?

21 A. I have checked records.

22 Q. I am not asking records. I am asking a legal.
23 You are saying in this that creation of a name constitutes
24 a new entity, isn't that right?

25 A. I am not saying that. What I am saying is you

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1 put in a request that told us that you were changing the
2 name of the company and that you filed a tariff to that
3 effect. And the name of that entity was changed to the
4 name you requested along with the tariff. That's all I am
5 saying.

6 Q. Does a CC&N belong to the corporate entity
7 that holds it or to the name it is being used to provide
8 services?

9 A. The CC&N is awarded by the Commission to the
10 qualified applicant.

11 Q. But is it held by the corporate entity that
12 holds it or is it simply a matter of what name is used to
13 provide the service?

14 A. The holding of the CC&N is just a license to
15 do business in the state to provide service.

16 Q. Are you familiar with the concept of a trade
17 name?

18 A. Trade name? Yes, in the sense you get it
19 registered.

20 Q. Yes.

21 A. In the sense you get it registered to do
22 business in the state.

23 Q. Does the State of Arizona require you to
24 register a trade name?

25 A. I am not familiar with that type of law.

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1 Q. You are making an accusation here and you said
2 you have done due diligence to do it. Do they or don't
3 they require a registration of trade names?

4 MR. HORTON: Objection; calls for a legal
5 conclusion.

6 ALJ DION: Well, not only that, Mr. Bostwick,
7 your answer is, your answer from previous I can sense is
8 you don't know. Is that -- you said you didn't study that
9 law. Well, you don't know the answer to that; is that
10 fair to say?

11 THE WITNESS: I don't know the answer to the
12 trade name. But if you are referring to the trade name as
13 a d/b/a, for example, that's different. Then I would.
14 That's handled by the Secretary of State.

15 BY MR. WETHERALD:

16 Q. In fact, Mr. Bostwick -- and unfortunately,
17 Your Honor, I will apologize, because in my foray I left
18 this particular docket to show this -- in fact,
19 Mr. Bostwick, Arizona does not require the registration of
20 a trade name. And if you would like me to go get the
21 documentation, I can. It is right over here at the
22 Secretary of State and right on the form.

23 ALJ DION: That is something probably that you
24 might want to do over the lunch break when you testify,
25 Mr. Wetherald. I think that the essence of your question

1 is, you know: Mr. Bostwick, do you know whether or not
2 Arizona requires the registration of a trade name?

3 Is that fair enough?

4 MR. WETHERALD: Yes.

5 ALJ DION: That is your question,
6 Mr. Wetherald?

7 MR. WETHERALD: Yes.

8 ALJ DION: And, Mr. Bostwick, I think your
9 answer is --

10 THE WITNESS: I don't know that.

11 ALJ DION: That's what I thought.

12 Mr. Wetherald, please continue.

13 MR. WETHERALD: I apologize I didn't bring it.
14 And maybe we can come back and bring it back if Your Honor
15 so desires.

16 BY MR. WETHERALD:

17 Q. But if the use of a trade name is not required
18 to be registered by the State, then if PCMG wanted to use
19 the name Timmy Two-Ton's Great Telephone Company, would
20 that be illegal?

21 A. I don't know if that would be legal or
22 illegal.

23 Q. Well, let's assume for a minute that there is
24 no state requirement to register the trade name. Would I
25 be required to do that?

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1 A. Well, you put in a request to change the name
2 that you did. So --

3 Q. All right.

4 A. -- I would assume that you would be able to do
5 that, too.

6 Q. Let's go back. Maybe we need to clarify a few
7 concepts here.

8 Corporate entities have a name, correct?

9 A. That is correct.

10 Q. That is filed and registered.

11 That is in this instance the name that was
12 changed, correct?

13 A. You changed the name, yes, requested a change.

14 Q. I changed a corporate name?

15 A. Yes.

16 Q. I changed it from LiveWireNet, LLC to
17 something else, correct?

18 A. Right.

19 Q. And that something else was The Phone Company
20 Management Group, LLC, is that correct?

21 A. Doing business as The Phone Company.

22 Q. Do you understand that a trade name is
23 different from a corporate name?

24 A. I am not familiar with the trade name other
25 than the d/b/a name that you used.

1 Q. D/b/a and trade name are fundamentally the
2 same thing but a d/b/a doing business or trade name is not
3 the corporate name; do you understand that?

4 A. That's correct. I understand that.

5 Q. So if there is no statutory requirement in
6 Arizona for me to register a trade name, and I choose to
7 go out and advertise and use a trade name such as Timmy
8 Two-Ton's Great Telephone Company without registering it,
9 have I violated any law?

10 A. I am not aware of the law. You said that
11 there is, there is no law to do it. I don't know that.

12 Q. Well, let's assume that there is no law that
13 required me to register. Have I then violated the law?

14 A. I don't know. That's a hypothetical thing. I
15 don't know. I don't do hypotheticals.

16 Q. Mr. Bostwick, one of my problems here is you
17 are making assertions, as a matter of fact you are making
18 legal assertions in your testimony. You are stating in
19 your testimony that there was nobody authorized to offer
20 service under the name The Phone Company of Arizona. That
21 presupposes that somehow there was a legal violation by
22 somebody in the use of that name, doesn't it?

23 A. I know that The Phone Company of Arizona Joint
24 Venture doing business as The Phone Company of Arizona is
25 not certificated in the state to do business.

1 Q. I am not asking you if they are.

2 A. That's all I know about it. Because you
3 mentioned The Phone Company of Arizona.

4 Q. See, we are getting confused on semantics,
5 Mr. Bostwick.

6 If The Phone Company Management Group chose to
7 offer services under the trade name The Phone Company of
8 Arizona, would that have violated any law that you are
9 aware of?

10 A. Not being a lawyer, I am not aware of that.

11 Q. You make that assertion, Mr. Bostwick.

12 MS. SCOTT: Your Honor, I am going to object
13 because I think that is a mischaracterization of his
14 testimony.

15 ALJ DION: Well, I am sure that is something
16 you are going to clear up for me on redirect.

17 Mr. Wetherald, I am going to interject. We
18 have been doing a really good job of not talking over each
19 other. I just wanted to, it is one of the things that I
20 forgot to do in the beginning.

21 Please, Mr. Bostwick, wait for, I am not
22 picking on you, this is for any of the witnesses, please
23 wait for the question to be finished and then respond.
24 And then, Mr. Wetherald, with your follow-up, and anyone
25 else, wait until the answer comes out. The court reporter

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1 is trying to type all this stuff down and it really
2 behooves everybody that we get the complete answer so
3 people don't talk over each other. We have been doing a
4 really good job of it so far this morning so I don't have
5 a complaint. It is something I usually say, so just a
6 reminder.

7 Please continue, Mr. Wetherald.

8 BY MR. WETHERALD:

9 Q. Mr. Bostwick, go back to page 10 of your
10 testimony.

11 Just for the sake of brevity, in the first
12 question that we ask -- the question was asked: Do any of
13 the respondents to this complaint possess a CC&N?

14 If you look down in your answer, and I am
15 going to read it: No. Neither LiveWireNet of Arizona,
16 LLC, d/b/a LiveWireNet nor The Phone Company Management
17 Group, LLC, d/b/a The Phone Company possessed a CC&N that
18 would allow them to do business as The Phone Company of
19 Arizona. Thus, even if the name change discussed above
20 had included the necessary CC&N transfer, the new entity
21 would not have been certificated to do business as The
22 Phone Company of Arizona.

23 You don't see any problem with this statement?

24 A. No, I don't.

25 Q. Really.

1 First of all, do you know whether or not the
2 change of a name constitutes the establishment of a new
3 entity?

4 A. If you change the corporate name?

5 Q. You have a new entity?

6 A. You could. I don't know for sure.

7 Q. I am not asking you if you could. Do you or
8 don't you? That's a yes or no answer.

9 A. A name change wouldn't necessarily change the
10 corporate entity.

11 Q. But yet you say it does here?

12 A. I did it in the sense that a company alluding
13 to the fact that it has a CC&N. And it doesn't --

14 Q. Well, wait a minute. If there is no entity,
15 and they simply changed the name, they still have a CC&N?

16 A. The name change that we have doesn't refer to
17 The Phone Company of Arizona Joint Venture doing business
18 as The Phone Company.

19 Q. This question doesn't deal with The Phone
20 Company of Arizona Joint Venture. It deals with the
21 LiveWireNet or Phone Company Management Group, LLC CC&N,
22 not the joint venture.

23 A. But you asked for that to be changed.

24 Q. No, no. I did. But Mr. Bostwick, you are
25 asserting in this question that the name change created a

1 new entity that would have required a new CC&N, isn't that
2 what you are asserting?

3 A. No, I don't believe I am.

4 Q. Okay. So if The Phone Company Management
5 Group, which is what you are asserting in this question,
6 offered service as The Phone Company of Arizona, they
7 would have still had the proper CC&N and tariff on file to
8 do so, wouldn't have they?

9 A. Can you repeat that again?

10 Q. If The Phone Company Management Group, LLC or
11 LiveWireNet, whatever you want to call it, decided to do
12 business and provide services under the name The Phone
13 Company of Arizona, they still would have had the
14 requisite or required certificate of convenience and
15 necessity and tariffs on file to offer that service,
16 correct?

17 A. If they filed for a name change to that, yes.

18 Q. Is there a requirement to file for a name
19 change for that?

20 A. Yes. You, you have to file, if you wanted to
21 change the name you have got to tell us what it is. And
22 you do that also by filing a tariff with it.

23 Q. What rule -- first of all, let's clarify.

24 ALJ DION: Mr. Wetherald, I am sorry.

25 When you say "us," Mr. Bostwick, who is "us"?

1 THE WITNESS: Sorry. The Commission.

2 ALJ DION: Thank you.

3 BY MR. WETHERALD:

4 Q. Mr. Bostwick, is the use of a trade name the
5 use of a corporate name?

6 A. No.

7 Q. So follow my question. If The Phone Company
8 Management Group offered service under the trade name,
9 didn't change its name, it just is using a trade name, a
10 d/b/a or a fictitious name, whatever you want to call it,
11 that's all they did, they didn't change their name, they
12 are just using a trade name --

13 Do you understand what I am saying?

14 A. Yes.

15 Q. -- if they were to do that, they would still
16 be doing so and have the proper certificate of convenience
17 and necessity and tariffs on file with this Commission,
18 correct?

19 A. No.

20 Q. Why?

21 A. Because you didn't form the Commission --
22 inform the Commission that you were changing to that. You
23 informed the Commission that you were changing it to
24 something else.

25 You changed, you requested the change from

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1 LiveWireNet of Arizona doing business as LiveWireNet to be
2 changed to The Phone Company Management Group, LLC doing
3 business as The Phone Company. And that's what the
4 Commission did. We have records. We have a tariff on
5 file for that.

6 Q. Mr. Bostwick.

7 A. That's all I am saying.

8 Q. Mr. Bostwick, but is it legally correct?

9 A. As far as the Commission records are
10 concerned --

11 Q. No. Is it legally correct that I have a
12 requirement to file that name change of the fact I am
13 using a d/b/a with you?

14 A. I don't know the legalities of it. All I can
15 tell you is that from the Commission's practice and
16 established rules that you have to do it that way.

17 Q. Then give me the rule. Cite to me the rule
18 that says that's how I have to do it.

19 A. I can't think of the rule right now. I
20 can't --

21 Q. Would you like some time to go find the rule?

22 A. It has been an established practice.

23 Q. I didn't ask if it is a practice. I asked if
24 it is a rule.

25 A. I am giving you my answer.

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1 Q. Does this Commission have the right to do
2 enforcement action on the practices?

3 A. Not everything is written down.

4 Q. And you have the right if it is not written
5 down to make an enforcement action?

6 A. The Commission has the right.

7 Q. Where? Show me in the rules or statute where
8 the Commission has that right.

9 A. I don't have it before me.

10 MR. WETHERALD: Your Honor, can we take a few
11 minutes for him to go find it?

12 ALJ DION: Mr. Bostwick, would you like -- you
13 know what? Actually we are at the 10:30 break anyway. So
14 why don't we go ahead and take a break. It is ten, a
15 little after 10:25. Why don't we come back at, little bit
16 longer and we will go into lunch a little bit, come back
17 a quarter to. So quarter to 11:00 is when we will start.

18 Over the break, Mr. Bostwick, based on
19 Mr. Wetherald's questions, why don't we review, look for
20 the rule and/or the practice that you were speaking about
21 and be prepared to answer that question at a quarter to
22 11:00.

23 I will note for the record that Chairman
24 Spitzer has joined us. And at this point I was going to
25 take a 15-minute break, for the record. So why don't we

1 go ahead do that take a 15-minute break and reconvene at
2 quarter to a 11:00.

3 (A recess ensued.)

4 ALJ DION: Okay. We are back on the record.
5 Mr. Bostwick it still at the stand.

6 Mr. Bostwick, you realize you are still under
7 oath?

8 THE WITNESS: Yes, I do.

9 ALJ DION: Mr. Wetherald, your witness.

10 BY MR. WETHERALD:

11 Q. Were you able to find a rule or statute,
12 Mr. Bostwick?

13 A. I was able to find three items. And I
14 misspoke on the so-called rule.

15 But the three items that I have, one is the
16 application itself when you file for CC&N. You have to
17 identify the d/b/a. Also, the decision order granting the
18 CC&N indicates that you list the d/b/a. And then in this
19 particular case, we have a pending application which has
20 the name The Phone Company of Arizona. So we would have
21 to know what is the correct name of the entity and the
22 d/b/a before a license would be granted.

23 So on that basis, a different d/b/a associated
24 with a corporate name would constitute a different entity.
25 We have that situation here. We have names similar but

1 not quite the same, but different entities.

2 Q. Mr. Bostwick, I understand you have an
3 application process. And you had mentioned that there was
4 an order that requires --

5 A. No. The order lists the d/b/a, the entity
6 that is going for the CC&N, which would be the corporate
7 name and d/b/a name.

8 Q. But information asked for on that application,
9 an order that lists a name, and then there was a third
10 one?

11 A. Pending application, which we have here in
12 this case.

13 Q. Or pending applications. Do those rise to the
14 level of a statutory requirement?

15 A. They identify different entities.

16 Q. That wasn't my question. Does it rise to the
17 level of a statutory requirement?

18 A. I don't have a firm positive or negative
19 answer one way or another on that. I really don't know.

20 Q. Okay. I will probably come back to this a
21 little bit.

22 Let's assume for a minute -- well, we don't
23 need to assume. Other than the confusion in names, you
24 have in your testimony, and we can find it if you want me
25 to, or we can just kind of agree that it is there and it

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1 is also I believe in the complaint, the assertion is
2 basically made and even identified that at all times,
3 other than the Staff, almost all the other parties in this
4 have asserted it was Phone Company Management Group
5 offering services under The Phone Company of Arizona. Do
6 you dispute that?

7 A. I am not sure I really understand your
8 question. Can you repeat it for me, please?

9 Q. Let me ask you this: Staff has been told by
10 virtually, well, other than Frank, he hasn't been here,
11 but virtually every other respondent in this case, Staff
12 has been told that the entity providing service has always
13 been Phone Company Management Group, LLC; is that
14 accurate?

15 A. What is the name with the d/b/a attached to
16 it?

17 Q. Let's not get hung up on names for a second.
18 Okay? Hasn't, at the end of the day, the LLP, myself,
19 through counsel or otherwise, possibly even David Johnson,
20 all represented to the Commission that the entity offering
21 services, regardless what name is offering service, but
22 the entity offering the service was The Phone Company
23 Management Group, LLC?

24 A. No, I can't really say that, because I see
25 bills with other names on it.

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1 Q. I am not asking you about the bills. I am not
2 asking you what name is on the bills. I am not asking you
3 any of that. I am asking you what you have been told by
4 people who are respondents in this case.

5 A. Which people?

6 Q. Start here. Have you had conversations with
7 the LLP and their counsel as to who was offering services
8 in Arizona?

9 A. I have had no verbal conversations at all.

10 Q. Have they ever made a representation as to who
11 they believe was offering services in Arizona?

12 A. I can't recall. I mean I can't think of
13 anything.

14 Q. Do you recall whether myself, On Systems,
15 Phone Company Management Group or any of the entities
16 which I might represent have made a representation as to
17 who they believe was the service offering -- who provided
18 service?

19 A. No, I don't.

20 MR. WETHERALD: Can I take just a few seconds,
21 Your Honor?

22 ALJ DION: Sure.

23 BY MR. WETHERALD:

24 Q. So you don't recall whether we have ever made
25 that representation to you?

1 A. I don't recall.

2 Q. Can you turn to your testimony again on
3 page 10. Starting at line 11, you can read the question
4 and then the answer?

5 A. Yes. What explanation does the company offer
6 for not having a valid CC&N in Arizona?

7 The company claims that it is actually
8 providing service to customers under the old LiveWireNet
9 CC&N. However, this argument is not consistent with the
10 facts that show that while the Company's various
11 affiliates were using almost identical names to provide
12 service to customers, resulting in an inaccurate
13 appearance that the same company may be providing service,
14 those names in actuality represent very different
15 corporate entities.

16 ALJ DION: I am going to interject.

17 I know, for the record, there was an errata
18 filed. And I am looking at my copy. And I believe that
19 the "However" sentence says, "However, this argument is
20 not consistent with the facts which show that while,"
21 strike the company's various affiliates and insert two
22 different companies, so that he was reading it, but there
23 is a subsequent errata.

24 And, Mr. Bostwick, I wanted to make sure that
25 was consistent with the subsequent filing. So that

1 "However" sentence should read: However, this argument is
2 not consistent with the facts that show while two
3 companies using identical names to provide service to
4 customers. And then it continues on with your answer. Is
5 that correct, Mr. Bostwick?

6 THE WITNESS: Yes, with the errata.

7 ALJ DION: Okay.

8 BY MR. WETHERALD:

9 Q. So actually somebody, at least in this
10 proceeding, has represented to the Commission, as
11 indicated by your testimony here, and I am going to assume
12 when this does -- you were talking about Phone Company
13 Management Group or one of my affiliates, that somebody
14 did represent that the company actually providing service
15 was LiveWireNet or PCMG under their certificate of
16 convenience, isn't that accurate?

17 A. LiveWireNet of Arizona --

18 Q. Well --

19 A. -- LLC, yes, doing business as LiveWireNet.

20 Q. Well, but LiveWireNet changed its name, didn't
21 it?

22 A. Yes. This changed to The Phone Company
23 Management Group, LLC doing business as The Phone Company.

24 Q. And you have already attested to the fact that
25 The Phone Company Management Group has a CC&N?

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1 A. That's correct.

2 Q. Okay. So at least with regards, and I want to
3 stay away from names right now because there seems to be a
4 lot of confusion with you people about names, all right,
5 but in as far as assertions only, not talking about bills
6 or anything else, just what you have been told by myself
7 and other people, okay, and I am sure The Phone Company,
8 LLP can address this if they choose to, but what has been
9 represented to you is that the company offering services
10 has been The Phone Company Management Group, LLC?

11 A. Doing business as The Phone Company, that's
12 correct.

13 Q. Stay away from names, The Phone --

14 A. That's the entity. And that's what I am going
15 by. That's on the CC&N.

16 Q. Mr. Bostwick, the answer is the company claims
17 that it is actually providing service under the old
18 LiveWireNet CCN; is that an accurate statement?

19 A. That's true.

20 Q. Did anybody at the company ever clarify and
21 say it is the old LiveWire CC&N doing business as Phone
22 Company or did they just say it is being offered under the
23 old LiveWireNet CC&N?

24 A. This is all I know, what I wrote right here.

25 Q. Okay. Do you have any information, other than

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1 the confusion that you seem to have about names, okay, I
2 don't know how to make this any clearer, okay, we will
3 deal with the name issue in a minute --

4 All right?

5 A. All right.

6 Q. Okay.

7 -- other than the issue about the name used,
8 do you have any indication that anybody other than The
9 Phone Company Management Group, LLC ever offered service
10 in Arizona?

11 A. The only information that I have is the fact
12 that there has been ads to that, that another company,
13 similar names.

14 Q. But that's a name issue, isn't it,
15 Mr. Bostwick?

16 ALJ DION: I need a break for a second,
17 Mr. Wetherald. I am sorry to interrupt your train of
18 thought.

19 I apologize to anyone on the listen line. I
20 thought I had turned the microphone on. In fact I had
21 turned them off it appears.

22 For those on the listen line, Mr. Bostwick has
23 taken the stand again and Mr. Wetherald was asking him
24 some questions, essentially was talking about the various
25 names of the entities involved here. But his underlying

1 question to Mr. Bostwick was regarding the various
2 entities including the LLP and the other named
3 respondents, as to who they represented to Staff as the
4 company and/or entity providing service in Arizona
5 essentially was the line of questioning.

6 Is that correct, Mr. Wetherald?

7 MR. WETHERALD: Yes, it is.

8 ALJ DION: I apologize for interrupting you.
9 Please continue.

10 BY MR. WETHERALD:

11 Q. All right. Just --

12 ALJ DION: Do you need to have the question
13 restated based on that interruption?

14 MR. WETHERALD: Sure, why don't we.

15 (The record was read by the reporter as
16 requested.)

17 ALJ DION: That was the question to you,
18 Mr. Bostwick.

19 THE WITNESS: Yes.

20 BY MR. WETHERALD:

21 Q. Okay. So other than the naming issues, which
22 we don't seem to be able to get over right away, there is
23 no other indication anywhere in this record that anybody
24 other than The Phone Company Management Group ever offered
25 services, correct?

1 A. What you mean by indication, what I interpret
2 as indication may be different.

3 BY MR. WETHERALD:

4 Q. I am saying other than names.

5 A. Well, when I have copies of bills --

6 Q. But that's a name issue. Let's get away from
7 name issues.

8 A. Could you ask the question. Providing
9 service other than the name? You wouldn't know other than
10 the name.

11 Q. Okay. Let's go with a name for a little bit
12 since we seem to be hung up with that.

13 What was the name used?

14 A. Relative to what?

15 Q. What was the name used that was advertised and
16 was on the bills?

17 A. The Phone Company of Arizona was on the bills.

18 Q. Did it have another descriptive indicator,
19 like LLC, LLP, Joint Venture, JV, Inc.?

20 A. No.

21 Q. Just The Phone Company of Arizona?

22 A. Of Arizona.

23 Q. Now, normally when a corporate entity puts its
24 name on a bill, doesn't it usually indicate that it is an
25 entity by signifying with some sort of designation what

1 type of entity it is, such as LLC, Inc., LLP?

2 A. I don't know the normality of that.

3 Q. So in this instance, you have at least three
4 people, well, two that we know of, possibly a third, and
5 we will get to the third, that have the name The Phone
6 Company of Arizona, correct?

7 A. A little bit different.

8 Q. Are they different?

9 A. One is The Phone Company of Arizona Joint
10 Venture doing business as The Phone Company of Arizona.
11 The other one is The Phone Company of Arizona, LLP.

12 Q. But other than the designation, they are
13 identical, aren't they?

14 A. Well, not really. If you add the name LLP
15 behind the one, it is a different entity.

16 Q. Is the designation, correct?

17 ALJ DION: I am going to try to do this a
18 little quicker.

19 MR. WETHERALD: Okay.

20 ALJ DION: In all three of these names, The
21 Phone Company of Arizona, The Phone Company Joint Venture,
22 et cetera, and The Phone Company of Arizona, LLP, all
23 three of those titles have the name The Phone Company of
24 Arizona in them; is that fair enough to say, Mr. Bostwick?
25 They might have more words, but they all at least have

1 those words?

2 THE WITNESS: They have three words, I will
3 grant you, The Phone Company. The Phone Company is in --
4 The Phone Company of Arizona, which is a d/b/a of Phone
5 Company of Arizona Joint Venture. Then you have --

6 ALJ DION: And then The Phone Company of
7 Arizona, LLP?

8 THE WITNESS: Right.

9 ALJ DION: So I am go --

10 THE WITNESS: That's two.

11 ALJ DION: I am going to say they have The
12 Phone Company of Arizona.

13 THE WITNESS: LLP.

14 ALJ DION: No, no. I am going to say that all
15 three of those entities have the four words, The Phone
16 Company of, actually five, of Arizona, in them. They may
17 have more words after them but at least all three of them
18 have The Phone Company of Arizona somewhere in their
19 title; is that fair to say?

20 THE WITNESS: Not by my record. By my record,
21 Judge, Phone Company Management Group, LLC is doing
22 business as The Phone Company, that's it.

23 ALJ DION: Okay. In that title, is The Phone
24 Company of Arizona or The Phone Company of, or The Phone
25 Company?

1 THE WITNESS: Mine is just The Phone Company.

2 ALJ DION: Okay. And in the other two, it
3 actually says The Phone Company of Arizona, is that
4 correct?

5 THE WITNESS: That's correct.

6 ALJ DION: But in that joint venture there is
7 also something talking about Arizona in it as well?

8 THE WITNESS: Yes.

9 ALJ DION: So they may not occur as The Phone
10 Company of Arizona all on one line, but they all have
11 those basic words in them? As a matter of fact, that's
12 part of the confusion --

13 THE WITNESS: That's right.

14 ALJ DION: -- of this case; is that fair to
15 say?

16 THE WITNESS: That is correct.

17 ALJ DION: Mr. Wetherald, is that what you are
18 getting to?

19 MR. WETHERALD: That is exactly what I am
20 trying to get to. So thank you, Your Honor.

21 ALJ DION: Thank you.

22 BY MR. WETHERALD:

23 Q. Now, Mr. Bostwick, and I don't want to spend a
24 lot more time on this because it is extremely frustrating
25 to get through this, but at the end of the day, if there

1 is no statutory requirement that I register a trade name,
2 there is no rule of the Commission that I notify them of
3 the use of that trade name, I could go out and do business
4 and name and advertise and put it on my bill however I
5 wanted to do it, use Timmy Two-Ton's Great Telephone
6 Company, use The Phone Company of Arizona Great Guy, use
7 Dial Me whatever, regardless of what that name is, other
8 than if it is lewd or whatever, maybe there are
9 restrictions there, but as a fundamental fact, short of
10 actually legally changing the name, in Arizona, by law and
11 by Commission's rules or omissions of rule, meaning it
12 doesn't exist, I could do business under whatever name I
13 choose to do business under, correct?

14 A. No, I don't think that would be correct.

15 Q. And what rule says I can't?

16 A. Well, the purpose of having a name to --

17 Q. Mr. Bostwick --

18 ALJ DION: I am going to let him answer the
19 question, Mr. Wetherald. So we may be getting to it. If
20 not, you can reurge it.

21 You were saying the purpose, Mr. Bostwick.

22 THE WITNESS: Yes. The purpose of having a
23 unique name is to have one to do business and another one
24 in a regulatory sense so that the company can be
25 monitored, identified who it is. Because you could get

1 names confused, different groups, especially when you have
2 corporate names and turn around and have a d/b/a trade
3 name as you referred to.

4 And while I can't pinpoint an exact rule and I
5 am not really familiar with the statute per se one way or
6 the other, that is still being examined, by the
7 application we identify all companies, the corporate name
8 as well as their d/b/a. And for that same purpose people
9 want to change names. And to do that, they have to file a
10 tariff. And in doing so, when they file the tariff, they
11 change the name. So we know, when there is a complaint
12 coming in, what tariff we have to look at. And the tariff
13 should be responsive to the name.

14 So while I can't pinpoint an exact one, the
15 purpose of having identical names is also to identify
16 different entities, which we have here. We got three
17 companies with almost the same name, as Your Honor pointed
18 out. And that creates some of the confusion, especially
19 when you are getting business and billing customers, and
20 licensed as one thing, billing as another name and
21 advertising as somebody else.

22 BY MR. WETHERALD:

23 Q. Well, but that assumes, doesn't it, that there
24 is more than one entity involved in doing all of that?

25 A. Well, there could be affiliates that are

1 related to another entity.

2 Q. And I am going to go back because I probably
3 asked a pretty poor question. But we can agree for a
4 moment, Mr. Bostwick, that there is a lot of confusion
5 surrounding the name issue, can't we?

6 A. That would be a good agreement.

7 Q. However, isn't it also fair to say that this,
8 Staff's confusion about names, really, whether or not we
9 are confused about that, does not rise to the infraction
10 of a statute or a rule?

11 A. I can't really answer that without knowing the
12 statutory rule. Like I said, I am not a lawyer.

13 Q. Do you feel, Mr. Bostwick, that you should
14 know that before you bring an enforcement action?

15 A. My course of action is really based on a CC&N
16 identity. And what we have here is five companies'
17 applications by -- three or two are pending. The other
18 two have already got licensed. So I can't --

19 Q. But, Mr. Bostwick, I understand you are
20 confused. I don't think there is any room for doubt that
21 people are confused. Does that rise to the level of a
22 statutory rule violation?

23 A. The level of confusion?

24 Q. I don't care how confused it is. Is the fact
25 you are confused a violation of law?

1 A. I don't know of any law about confusion. But
2 I am not confused as far as the five entities existing.

3 Q. But at the end of the day, does it matter?

4 A. It does when you are reviewing the activities
5 of companies.

6 Q. Well, maybe that was a bad question, too. Let
7 me put it this way: Can more than one company offer the
8 same service to the same customer at the same time?

9 A. Well, yes. I would think they could.

10 Q. Really? How?

11 A. If the customer may have different branches.

12 Q. No, the same customer -- offer the example.

13 Let me put it this way: Can I offer you and sell you
14 service on phone number 555-1212, and then have somebody
15 else offer you the same exact service on the same phone
16 number 555-1212 at the exact same time?

17 A. Not using the same line, no.

18 Q. Okay. So fundamentally we can agree that at
19 least service could not have been offered consecutive --
20 concurrently, concurrently by all three entities at the
21 same time?

22 A. That's true.

23 Q. Okay. And yet nowhere in this record, other
24 than the confusion of the names, there I go right back to
25 this, other than the confusion about names, there has only

1 been one entity represented as having offered their
2 services, correct?

3 A. Yes.

4 Q. Okay. And what we do know is that, regardless
5 of how bad of a taste it might leave in somebody's mouth
6 and confusing it might be, the fact that The Phone Company
7 Management Group chose to market its name under The Phone
8 Company of Arizona is not an actionable offense by this
9 Commission, is it?

10 A. But it didn't market that name. It used the
11 name The Phone Company.

12 Q. Well, no, it has a d/b/a The Phone Company,
13 but --

14 A. But --

15 Q. Mr. Bostwick, do you have any evidence that
16 would contradict my statement that The Phone Company
17 Management Group offered services, advertised under the
18 name The Phone Company of Arizona?

19 A. Phone Company Management Group, LLC doing
20 business as The Phone Company should use The Phone Company
21 name to offer service. That was granted to them in their
22 CC&N.

23 Q. It was. Was the CC&N ever granted to The
24 Phone Company Management Group under that name?

25 A. Well, when a transfer, the CC&N from the other

1 company.

2 Q. Maybe we are -- a transfer implies that CC&N
3 went from one entity to a brand new entity; is that a fair
4 statement?

5 A. Well, that was the name change. It can't
6 really transfer a CC&N.

7 Q. Exactly. There was a name change?

8 A. Right.

9 Q. But a name change of a corporate entity is
10 different, as we have discussed before, than how it or
11 what name it might use when it conducts business?

12 A. But the name that you provided was The Phone
13 Company.

14 Q. But what -- you know what? I understand that
15 there is confusion with that. But isn't it entirely
16 possible, without a violation of the rule because there is
17 no rule or law that says I have to register the name Phone
18 Company of Arizona as a d/b/a of Phone Company Management
19 Group, that I could have used that trade name?

20 A. But you had an application pending with Phone
21 Company of Arizona Joint Venture d/b/a The Phone Company
22 of Arizona.

23 Q. But does that mean that that application
24 was -- was that application granted?

25 A. No.

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1 Q. Has anybody ever represented to you that a
2 transfer of the company or the customers went to The Phone
3 Company of -- or to the Joint Venture?

4 A. No.

5 Q. So if, for business purposes, we were going to
6 move the customers from one entity to the next, how might
7 that be accomplished?

8 A. Well, you would have to have a CC&N. We
9 wouldn't allow it.

10 Q. Okay. And we want to make that as
11 transparent, so we can't move the customers from Phone
12 Company Management Group to the Joint Venture until the
13 Joint Venture has a CC&N, right?

14 A. Doing business as Phone Company of Arizona,
15 right.

16 Q. Let's get away from d/b/a because they are
17 not -- let's use the corporate names. Okay?

18 So in order for me to transfer from one entity
19 to the next, I have to get the other entity registered,
20 correct?

21 A. Make an application, right.

22 Q. Make an application. And I can't move the
23 customers to the new entity until that application is
24 granted, correct?

25 A. That's correct.

1 Q. Is there any evidence that those customers
2 were moved to the new entity prior to my being approved?

3 A. No, there isn't.

4 Q. Okay. So once again, other than the fact that
5 you are confused about names, there is no evidence that
6 anybody other than, okay, other than PCMG, as represented
7 by every respondent in this case, ever offered service to
8 any customer in Arizona?

9 A. Phone Company Management Group did. They
10 provided service.

11 ALJ DION: I have a question of clarification,
12 Mr. Wetherald. You used the example of the 555-1212, you
13 can't have the same phone number at the same time. And I
14 think some of the confusion is some of the wording as
15 well. Because I believe that there might be some
16 confusion, I am going to ask Mr. Bostwick about that, on
17 the word offered and provided. Because I believe that in
18 the billings, and I am, I haven't heard a dispute about it
19 and I may, but it has been alleged that in some of the
20 billings and advertising that The Phone Company of
21 Arizona, that name came about. And it could be construed
22 that, in advertising and/or billing, you are offering, and
23 certainly the billing perhaps even providing, but I think
24 that is the key distinction that we are tripping up on.

25 So while your example of 555-1212, you can't

1 have the same provider, you could certainly offer the same
2 service, you may not be able to provide it. So I think if
3 we concentrate on that.

4 Mr. Bostwick, would it be fair to say that
5 what Mr. Wetherald is saying, that the other respondents
6 and based upon the data requests and everything that you
7 have evaluated in your investigation, that PCMG, The Phone
8 Company Management Group, is the entity that is providing
9 and was providing telephone service to customers in the
10 state of Arizona?

11 THE WITNESS: That's correct.

12 ALJ DION: Okay. And that they may have done
13 so under another name such as The Phone Company of
14 Arizona, but they are the underlying provider, is that
15 correct?

16 THE WITNESS: That's correct.

17 ALJ DION: And it is also your testimony that
18 the Joint Venture did not provide any of those services?

19 THE WITNESS: I don't really know if that's
20 true because of the last name of the Joint Venture, the
21 d/b/a name they were using.

22 ALJ DION: Okay.

23 THE WITNESS: They are using The Phone Company
24 of Arizona. So --

25 ALJ DION: Right.

1 THE WITNESS: -- it is hard to determine if
2 they did or did not.

3 ALJ DION: And I am not saying offered. And
4 the reason I am saying is that it is my understanding that
5 the Joint Venture -- I am going to refer to it as the
6 Joint Venture.

7 THE WITNESS: Okay.

8 ALJ DION: The Joint Venture never received a
9 certificate from this Commission, is that correct?

10 THE WITNESS: That's correct.

11 ALJ DION: Is there any indication that the
12 joint venture served any of the customers?

13 THE WITNESS: With the absence of a CC&N, I
14 don't believe that they served.

15 ALJ DION: Okay. So I believe Mr. Wetherald's
16 point is that the provider underlying the service, whether
17 they did it under X name, Y name or Z name, the provider
18 of those services was PCMG. Is that correct?

19 THE WITNESS: That's correct.

20 ALJ DION: And it is PCMG's allegation that
21 they were doing that properly under the certificate
22 granted to it when its name was LiveWire, LiveWireNet, et
23 cetera?

24 THE WITNESS: That's correct.

25 ALJ DION: Is that where you are going,

1 Mr. Wetherald?

2 MR. WETHERALD: Yes.

3 ALJ DION: Okay.

4 BY MR. WETHERALD:

5 Q. I am going to move and then I am going to come
6 back to this just real briefly. But I want to go to
7 Count Two for a second. These are somewhat related.

8 And just for a point of clarification, this is
9 really, and I want to be real concise about this,
10 Count Two is not addressing any of the issues brought up
11 in Counts Three and Four in terms of financial or
12 technical ability, is it?

13 A. It is just addressing fit and proper entity.

14 Q. But what I am saying is, that count stands on
15 its own, I don't have to worry about you coming back and
16 trying to bring in other aspects of the other two counts.
17 This is really, you are saying this guy isn't a good
18 enough guy to hold a CC&N in Arizona. Is that a fair
19 characterization?

20 A. Right.

21 Q. So this has to do with the Arizona statutes
22 and rules against bad guys; is that a fair statement?

23 A. Well, I would not characterize it as bad guys.
24 I would just say that not following the rules of any
25 entity, not following the rules.

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1 Q. Okay. But this really doesn't have anything
2 to do with whether or not I followed the rules. This has
3 to do with you don't think I am morally aptitude enough to
4 carry it to the end, isn't that correct?

5 A. Well, of financial, technical and managerial
6 capability.

7 Q. But those are the other areas?

8 A. I don't want to deal in morality.

9 Q. Well, you don't want to deal in morality?

10 A. I mean I don't use the word morality here in
11 the sense I am just using financial, technical and
12 managerial capability.

13 Q. But those are brought up in two other counts,
14 right?

15 A. What other counts? Financial and technical.

16 Q. Financial ability is brought up in Count
17 Three, right?

18 A. Right.

19 Q. Technical ability is brought up in Count Four,
20 correct?

21 A. Part of it.

22 Q. So what is Count Two?

23 A. Managerial.

24 Q. And a large portion of the managerial
25 assertion has nothing to do with whether I violated

1 Arizona rules. It has to do with whether or not I am a
2 morally good guy, doesn't it?

3 A. I don't think we are talking moral, sir.

4 Q. Really?

5 A. I think we are talking maybe past actions,
6 other jurisdictions.

7 Q. In other words, if I am a bad enough guy in
8 other jurisdictions and have bad enough press, I don't get
9 to have a CC&N; is that the gist for that?

10 A. Well, we look for that on our application when
11 we submit it, the application is submitted. We ask if
12 there has been any attempt to have problems in other
13 states. I forgot the exact wording but I can get it.

14 Q. Well, I think we need one of those. Should
15 have brought it with me. But I think what you asked on
16 your application is whether or not applicant has been
17 convicted of any criminal or other action related to the
18 provision in the telecommunication service.

19 A. I think I have one here to examine in detail.

20 Q. That would be helpful to get it. Maybe then
21 we won't be guessing.

22 A. I think A-11 would be we ask the applicant, or
23 he or she, whatever, if applicant has been or is currently
24 involved in any formal, informal complaint proceedings
25 before any state or federal regulatory commission.

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1 Q. Now, Mr. Bostwick, I filed timely on that? Is
2 there a time limit on that?

3 A. Time limit?

4 Q. Is it just open to ever or within the past
5 five or ten years. You mean the application?

6 Q. No. I am talking about that question.

7 A. Well, there is another question similar
8 throughout the five years --

9 Q. There are two of them. Read the first
10 question.

11 A. Indicate whether the applicant has been or is
12 currently involved in any formal or informal complaint
13 proceedings pending before any state or regulatory
14 commission. That's A-11.

15 Q. So that would have to do with current actions
16 that may be pending?

17 A. Right, formal or informal.

18 ALJ DION: I am going to clarify this. It
19 says -- you have read it twice now. Doesn't it say has
20 been, has been or is currently?

21 THE WITNESS: Yes.

22 ALJ DION: So to me, has been indicates
23 anything up until now, and then currently, is there still
24 something ongoing.

25 BY MR. WETHERALD:

1 Q. Between -- and clarify, in front of who?

2 A. Involved in any formal or informal complaint
3 proceedings pending before any state or federal regulatory
4 commission.

5 Q. Okay.

6 A. That's one question.

7 Q. Okay. And the second question is?

8 A. The second question is indicate if the
9 applicant has been or is currently involved in any civil
10 or criminal investigations and/or had a judgment entered
11 against it in any civil matter or convicted of any
12 criminal acts related to the delivery of
13 telecommunications services within the last five years.

14 Q. Okay. Are you saying that, if at the time
15 application is granted that those were not issues, meaning
16 that the person was not at the time involved in 11-A, or
17 had been in the case of the other one, but then after the
18 granting the CC&N actions were commenced, that this
19 Commission would have the authority to come in and revoke
20 their license because those had happened after the
21 application?

22 A. No. These are, applications are made up at
23 the time and put before the Commission.

24 Q. Okay. So if those actions happened after the
25 fact, this Commission wouldn't be able to come in under

1 the bad guy statute and revoke that license until they had
2 actually violated a law or rule here?

3 A. The Commission can pretty well do what it
4 wants.

5 Q. Really.

6 A. In terms of if the matter is put before them.

7 Q. Really.

8 A. I mean they make the decisions.

9 Q. Really. They don't have to answer to, you
10 know, somebody like, I don't know, the legislature?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Really. They can't be overturned or overruled
15 by, let's say, Maricopa County Superior Court?

16 A. That might be a possibility. I am not a
17 lawyer so I really can't answer that.

18 Q. So they are not governed by any statute or
19 granting of authority?

20 A. I am not -- they have authority from the
21 constitution.

22 Q. Well, they have authority from a lot of places
23 but it doesn't give them carte blanche to do whatever they
24 want, does it?

25 A. No one has carte blanche to do whatever they

1 want.

2 Q. Okay. As a matter of fact, Mr. Bostwick, one
3 of my allegations here is that you guys, and by your
4 statement I think it rests on its own, you guys exceed
5 your authority all the time. And in this case, you have
6 not only exceeded it, you erased the line when you
7 stated --

8 MR. HORTON: Objection; he is testifying.

9 ALJ DION: I am going to grant that.

10 If you have got something to show him,
11 Mr. Wetherald, and me and the other parties, I will be
12 willing to look at it. And do you want to ask questions
13 about that?

14 MR. WETHERALD: Yes, sir. I don't know how to
15 do this.

16 ALJ DION: Okay. Why don't you tell me what
17 it is. What do you have?

18 MR. WETHERALD: This here is Arizona Revised
19 Statute 41-1030.

20 ALJ DION: Okay. And that's a copy of that
21 statute?

22 MR. WETHERALD: Yes.

23 ALJ DION: Okay. Do you have other copies?

24 MR. WETHERALD: I do have. I have eight
25 copies.

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1 ALJ DION: Yes. First let's hand it out to
2 the parties, if you would.

3 MR. WETHERALD: Hopefully there will be enough
4 left over.

5 ALJ DION: If I could have one.

6 MR. WETHERALD: Oh, I am sorry.

7 Go ahead and give him one.

8 ALJ DION: Go ahead and give him the marked
9 one, whichever. When you get back to the microphone, can
10 you tell me what that is marked as?

11 MR. WETHERALD: I believe W-4.

12 ALJ DION: That's marked as W-4, is that
13 correct, Mr. Bostwick, at the bottom?

14 THE WITNESS: W-4.

15 ALJ DION: I have been handed what appears to
16 be the printed version essentially just off the computer
17 of Arizona Revised Statute 41-1030.

18 Anyone have an objection to this? Staff?

19 MR. HORTON: No objection.

20 MR. CROCKETT: No objection.

21 ALJ DION: Mr. Tricamo? Mr. Johnson?

22 MR. JOHNSON: No objection.

23 MR. TRICAMO: No objection.

24 ALJ DION: That was no objection from the both
25 of you. Okay.

1 Mr. Bostwick, you have, what is in front of
2 you, what is marked as W-4, is that correct?

3 THE WITNESS: That's correct.

4 ALJ DION: All right. And that is a printout
5 copy of Arizona Revised Statute 41-1030, is that correct?

6 MR. WETHERALD: Yes.

7 ALJ DION: Mr. Bostwick?

8 THE WITNESS: Yes, that's correct.

9 ALJ DION: I am going to take judicial notice
10 that that is a copy of the statute and I am going to allow
11 it in the record. Nobody has any objections anyway, but I
12 am just going to -- I will take judicial notice.

13 Mr. Wetherald, you wanted to ask questions?

14 BY MR. WETHERALD:

15 Q. Mr. Bostwick, will you please read paragraph B
16 in this paragraph?

17 A. The agency shall not base a licensing decision
18 in whole or in part on a licensing requirement or
19 condition that is not specifically authorized by statute,
20 rule or state tribal gaming compact. A general grant of
21 authority in statute does not constitute a basis for
22 imposing a licensing requirement or condition unless a
23 rule is made pursuant to that general grant of authority
24 that specifically authorizes the requirement or condition.

25 Q. So paraphrasing this statute would tend to

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1 indicate that your general granting authority is not good
2 enough to bring a licensing action?

3 MR. HORTON: Objection; it is calling for a
4 legal conclusion. I think this issue would be better
5 served if it were covered in briefs.

6 MR. WETHERALD: Your Honor --

7 ALJ DION: Your response?

8 MR. WETHERALD: My response would be, Your
9 Honor, one of the problems I have in this whole case is
10 that to a very large degree I think we could have, could,
11 if we just sat down and talked about the underlying facts
12 and agree -- I mean the, the fact of the matter is, is
13 that a lot of the things that happened, physically
14 happened exist today.

15 The arguments are largely legal arguments. I
16 mean then you have Mr. Bostwick and later you are going to
17 have Mr. Lebrecht whose testimonies are ripe with legal
18 conclusions. To now state he is not an attorney,
19 shouldn't have to give a legal opinion, I mean, is
20 outrageous. Strike his whole testimony because his whole
21 testimony is one big legal opinion. He may not quote any
22 legal statutes but he certainly asserts legal theory in
23 here.

24 ALJ DION: That is something that I can take
25 under my purview. And I will base Mr. Bostwick's

1 testimony and some of the things that I look at when
2 establishing the weight to which I will give it credence.

3 But, you know, for awhile here we have been
4 talking about a lot of legal conclusions that are probably
5 inappropriate for this, for this witness. I don't
6 necessarily believe what Mr. Bostwick has the, and it is
7 no offense to Mr. Bostwick who was bright enough not to go
8 to law school, I don't believe he has the training and/or
9 experience really to comment on statutes nor a legislative
10 intent or anything like that.

11 I do however have this in the record,
12 Mr. Wetherald, and I think Mr. Horton is right, regarding
13 probably addressing it through a brief scenario as to the
14 applicability of the statute to the Commission,
15 specifically in the application process, which appears to
16 be your point, and/or inapplicability.

17 MR. WETHERALD: And --

18 ALJ DION: Or inapplicability. If there is an
19 exception, you know, if there is something granted to the
20 Commission in the constitution or if there is anything
21 like that, and I am certainly not going to make the legal
22 conclusion here today about it, that is for you to
23 convince me of.

24 Go ahead, Mr. Wetherald.

25 BY MR. WETHERALD:

1 Q. The allegation, and I might tie this back at
2 the moment -- maybe I will just make this in a brief,
3 about the legal.

4 Going to the other issue in terms of licensing
5 decisions or whatever, Mr. Bostwick, you would have to
6 admit that you were unable to find any statute or rule
7 that would say that I could not use a d/b/a or trade name
8 without notifying the Commission, would you?

9 A. No, I can't really say that.

10 Q. Okay. That's all I ask.

11 Moving on to number two, again. In your
12 complaint on number two, if I can find it here --

13 Do I give copies of the complaints, or can I
14 just refer to it?

15 ALJ DION: Yes. I believe is that marked S-1?
16 Is your testimony marked S-1, Mr. Bostwick?

17 THE WITNESS: Yes.

18 MR. WETHERALD: And his -- oh, he has the
19 amended complaint.

20 ALJ DION: I am sorry. I thought you were
21 talking testimony. The complaint, you have the original
22 complaint which was filed in October of 2002, I believe.
23 Was it October two thousand --

24 MR. WETHERALD: I have that but I also have
25 the amended complaint because I don't know which one is

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1 being heard today to be honest with you.

2 ALJ DION: Mr. Crockett, did you want to say
3 something?

4 MR. CROCKETT: Your Honor, I had marked as the
5 LLP's exhibit a copy of the amended complaint, and I have
6 copies for the parties if you would like me to distribute
7 those.

8 ALJ DION: You were going to talk about the
9 amended complaint, Mr. Wetherald, that's what you are
10 going to get to?

11 MR. WETHERALD: I guess. I mean is that
12 germane to this? I mean, if it is not, we can cut out a
13 whole section of this hearing, so...

14 MR. CROCKETT: If it is any help, I am going
15 to get to this when I get an opportunity to have some
16 cross-examination.

17 ALJ DION: Okay. If you have got questions of
18 it, I would like it before the witness and Mr. Crockett's
19 offer is a good one.

20 MR. WETHERALD: Okay.

21 ALJ DION: So why don't we do that.

22 Mr. Horton, if I may, the amended complaint,
23 does it restate the original complaint and then add
24 charges.

25 MR. HORTON: That's correct, Your Honor.

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1 ALJ DION: Okay. So that's what we are
2 dealing with, Mr. Wetherald. It is amended in the fact
3 just that something has been added or deleted. Using the
4 amended complaint is probably the preferable way to go.

5 Do you agree, Mr. Horton?

6 MR. HORTON: That's correct, Your Honor.

7 ALJ DION: Okay. If you don't mind,
8 Mr. Wetherald, I will do this one too.

9 Mr. Bostwick, Mr. Crockett, what was this
10 marked as?

11 MR. CROCKETT: I had it marked as LLP-9.

12 ALJ DION: Mr. Bostwick, you have in front of
13 you something marked as LLP-9, is that correct?

14 THE WITNESS: Yes.

15 ALJ DION: Okay. LLP-9. And the --

16 THE WITNESS: Yes.

17 ALJ DION: And the title of that document,
18 which is actually at the bottom of the document, is
19 Amended Complaint, is that correct?

20 THE WITNESS: That's correct.

21 ALJ DION: And it is my understanding that
22 this is the amended complaint filed by Staff in this
23 matter, is that correct?

24 THE WITNESS: Yes, that's correct.

25 ALJ DION: Okay. Does anyone have an

1 objection to at this point admitting LLP-9?

2 MR. HORTON: No objection, Your Honor.

3 ALJ DION: Mr. Crockett?

4 MR. CROCKETT: No object.

5 ALJ DION: Mr. Wetherald?

6 MR. WETHERALD: No objection.

7 ALJ DION: Mr. Tricamo?

8 MR. TRICAMO: No.

9 ALJ DION: Mr. Johnson?

10 MR. JOHNSON: No.

11 ALJ DION: There being no objection, LLP-9
12 will be admitted.

13 MR. CROCKETT: If I might quickly, I would
14 like to note for the record Mr. Credle has arrived for the
15 hearing.

16 ALJ DION: Of course you may.

17 Mr. Wetherald, you had questions about the
18 amended complaint?

19 MR. WETHERALD: I do.

20 BY MR. WETHERALD:

21 Q. Mr. Bostwick, paragraph 33, second count,
22 page 9, could you turn to that, please. In paragraph 33
23 it cites the rule or statute in this case, which I am
24 assuming, and correct me if I am wrong, is the statute
25 which is being used to bring this count to action, would

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1 that be correct?

2 A. That's correct.

3 Q. And then in 34, you state another statute
4 which basically is what you are saying would give the
5 Commission the authority to enforce, right?

6 A. That's correct.

7 Q. So we really have two parts here. We have a
8 rule that I am violating, and we have the rule, or the law
9 that I am violating and the law that allows you to enforce
10 it; would that be a fair assessment?

11 A. Yes.

12 Q. Okay. Could you read paragraph 33 for me?

13 A. Yes. A.R.S. Section 40-361(B) states that
14 every public service corporation shall furnish and
15 maintain such service, equipment and facilities as will
16 promote the safety, health, comfort and convenience of its
17 patrons, employees and the public, and as will be in all
18 respects adequate, efficient and reasonable.

19 Q. Do you see anywhere in that language where it
20 says that the guy be a good guy?

21 A. I don't see where -- it doesn't say it.

22 Q. In fact, it doesn't even mention management
23 ability, technical ability, financial ability, doesn't
24 mention any of that, does it?

25 A. No. It says employees.

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1 Q. Well, but it doesn't say any of the others,
2 does it?

3 A. I don't know what you mean, patrons, employees
4 and the public.

5 Q. Well, I mean, will promote the safety and
6 health of those people. But this statute really isn't
7 speaking to intangibles, if you will, is it?

8 A. Well, this is a small section of it, so I
9 don't know the whole thing.

10 Q. Well, why don't you -- well, is there a
11 section that applies?

12 A. I am assuming. It is captured in quotes.

13 Q. So this would be the section being used, being
14 applicable in this situation, is that correct?

15 A. That's my understanding.

16 Q. But this really doesn't specifically identify
17 the issue, does it?

18 A. As far as account goes, it is used as a basis
19 to provide, introduce the count.

20 Q. But it is based on the belief or theory of
21 Staff that this count gives them the general authority to
22 bring the action, does it not?

23 A. I would say it does.

24 Q. But there are no statutes or rules cited by
25 Staff, either here or in your testimony, that would

1 specifically give them that right, is there?

2 A. No. That is subject to check.

3 Q. I am asking you if it is in any of the
4 documents before us today?

5 A. I can't say a firm yes. I can't remember
6 everything that is in there.

7 Q. Are you aware of any?

8 A. I am not aware of any.

9 Q. Have you read these documents and reviewed
10 your testimony?

11 A. I am aware and the review of the complaint
12 that we are looking at.

13 Q. Let's deal first with the management. You
14 address that somewhat in your testimony. If you turn with
15 me to page 11. Are you there?

16 A. Yes.

17 Q. And I don't need you to read this. I am just
18 kind of bringing it back so people are kind of, you know,
19 kind of see what I am addressing.

20 But at the bottom of, on page 11, you are
21 asked the question what are your findings. And you answer
22 Staff believes PCA lacks management capability to provide
23 telephone communications in Arizona because there is no
24 management structure.

25 Isn't that statement on its face silly?

1 A. No, I don't think it is.

2 Q. Let's examine that for a second.

3 Based on your understanding, when did PCMG
4 begin providing services to customers?

5 A. I believe it was, well, The Phone Company of
6 Arizona is the one that provided it.

7 Q. When did the party in question begin providing
8 services?

9 A. My best recollection was around April 18th,
10 something like that.

11 Q. And how many customers did they acquire in
12 Arizona, to the best of your understanding?

13 A. As far as acquire, I don't really know. I
14 would say maybe a little over 4,000, 4300, something like
15 that.

16 Q. And at least -- well, let me ask you a
17 question. You mentioned this a little later on in your
18 thing when you get into technical capability, but it is my
19 understanding based on your testimony that it really
20 wasn't until September, either mid or late September that
21 the Commission started receiving numerous customer
22 complaints, correct?

23 A. No, I can't answer that. I will have to defer
24 that to Brad Morton.

25 Q. Okay. Then can we at least, because Brad

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1 Morton is going to speak to that and we are not getting to
2 it next, because that is also germane to this discussion
3 and I don't want to try and have to go back to
4 cross-examine, can we agree we will stay away from that
5 issue for a moment?

6 A. Yes.

7 Q. Now, is it unusual for companies to outsource
8 functions, such as customer service, billing, sales?

9 A. I know it is done. To what extent, I can't
10 tell you.

11 Q. Okay. But if it was done in this case, it
12 really doesn't mean there isn't a structure in place and
13 this means the structure was added someplace else; would
14 that be a fair some?

15 A. I think we asked for an organizational chart
16 and structure.

17 Q. I am going to get there.

18 A. And we didn't get that.

19 Q. You didn't get that.

20 A. We didn't get that.

21 Q. Okay. But my question earlier was this is
22 silly on its face, and we are going to get that, too,
23 here, because I think it is well established, unless you
24 disagree, On Systems Technology or On Systems was
25 providing their services to The Phone Company Management

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1 Group, correct?

2 A. When you say On Systems, they had a contract
3 with another entity to do that.

4 Q. Okay. Let's just keep our own numbers then.
5 We won't even add those in. So let's just take, because
6 we also know basically that sometime in September or
7 October Qwest started providing services, I mean they
8 stopped processing orders.

9 So is it a fair assumption that we can agree
10 on that really the 4300 customers attributed to having
11 been served and billed by Qwest would have had to have
12 been provisioned and put on the account prior to that
13 happening, sometime in either September or October?

14 A. Subject to check. I don't know the exact date
15 of when --

16 Q. I don't think --

17 A. -- the new orders stopped.

18 Q. But for the purposes here, we can both agree
19 that that's probably when it stopped --

20 A. Subject to check, yes.

21 Q. -- in that time frame?

22 Now, that is April, May, June, July, August,
23 and let's just say September; at a minimum, 4300 customers
24 in six months. And yet your contention is that there is
25 no structure. Could you please explain to me how all

1 those people had orders taken, provisioned, put in a
2 billing system, phones answered, all of those things with
3 no structure?

4 A. My basis for the no structure is that we asked
5 you to provide us with an organization chart and layout of
6 responsibilities, duties, and so forth, your reply is
7 there isn't any.

8 Q. That wasn't my reply.

9 A. That's what one of your replies --

10 Q. No. I think you are mischaracterizing my
11 reply, but I am not going to get into that for the moment
12 since I am not testifying.

13 ALJ DION: You were close. But, yes, if you
14 have something to present to Mr. Bostwick in the form of
15 application, wait a minute, in the form of the
16 application, go ahead and do that, otherwise, let's just
17 move on.

18 MR. WETHERALD: In the --

19 ALJ DION: Do you have anything in the form of
20 data request or anything in your answer that you want to
21 present?

22 MR. WETHERALD: No.

23 ALJ DION: Okay. Do you want to move on?

24 BY MR. WETHERALD:

25 Q. However, regardless of whether you got that

1 information, the fact that you didn't have the
2 information, unless you are just trying to contort to get
3 there, really is not, does not constitute a lack of
4 structure, it just means you didn't get information,
5 doesn't it?

6 A. Well, he didn't get information, that's
7 correct.

8 Q. But yet here you made a definitive statement
9 that we don't have structure. I mean I am waiting to see
10 how we did all of that work with no structure.

11 A. Well, I believe a question was asked and I
12 responded that we asked for the information and we didn't
13 get any information concerning your organization
14 structure.

15 Q. But, Mr. Bostwick, it is one thing to say we
16 don't know what the structure is because he hasn't given
17 us the information. It is another thing to say we didn't
18 get the information therefore there must be no structure.

19 A. I think --

20 Q. Two different?

21 A. I think I replied there is no organization
22 structure.

23 Q. You are making a statement there is no
24 organizational structure, but you don't know if that is
25 true, do you?

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1 A. I am reporting what you gave us in the data
2 request.

3 Q. Mr. Bostwick, let's be clear about something.
4 Okay? The fact that you didn't get information doesn't
5 mean something didn't exist, correct?

6 A. The fact that we asked for it and your reply
7 was it is not here.

8 Q. Was my reply that there is nothing or that it
9 was managed by one entity, person or corporate?

10 A. Management structure, we asked for. You said
11 there wasn't any organization structure in terms of a
12 chart or anything of that nature.

13 Q. Could that be because PCMG outsourced its
14 services?

15 A. That's a possibility.

16 Q. Okay. And is outsourcing services somehow
17 inherently wrong, immoral or illegal?

18 A. No.

19 Q. But you would have to agree with me that
20 somebody someplace had some structure in place to get the
21 job done? And we are not talking about whether it was
22 adequate or not, we are just saying that work wasn't
23 performed.

24 A. My understanding from the data request that we
25 received from you was that day-to-day activities are

1 outsourced to some other entity.

2 ALJ DION: Mr. Wetherald, how many more
3 questions do you have on Count Two?

4 MR. WETHERALD: Well, now we are just getting
5 into sort of the fun stuff. My guess is probably another
6 45 minutes or so.

7 ALJ DION: Okay. Is this a good breaking
8 point?

9 MR. WETHERALD: Yes, actually it is.

10 ALJ DION: I was trying to recognize that. We
11 have hit the noon hour. So why don't we do that.

12 Is an hour and 15 minutes, is that sufficient
13 for everybody for lunch? Is that enough time,
14 Mr. Crockett?

15 MR. CROCKETT: Yes, Your Honor.

16 ALJ DION: Mr. Wetherald, Mr. Johnson,
17 Mr. Tricamo?

18 MR. JOHNSON: Yes, Your Honor.

19 MR. TRICAMO: Yes.

20 ALJ DION: Staff, hour and 15 minutes?

21 MR. HORTON: Yes.

22 ALJ DION: Why don't we come back 1:15, now a
23 little bit short of an hour and 15 minutes. We will
24 reconvene 1:15.

25 Mr. Bostwick, you can of course confer with

1 your attorneys, but you understand you are still under
2 oath and that talking to anybody else other than your
3 attorneys --

4 THE WITNESS: That's correct.

5 ALJ DION: -- during the break is prohibited.

6 THE WITNESS: I understand.

7 ALJ DION: Talk to your attorneys, go ahead,
8 but I want to make sure because it is sort of a longer
9 break.

10 THE WITNESS: Right.

11 ALJ DION: Appreciate that. We will do that
12 and we will be back here at 1:15.

13 (A recess ensued at 12:01 p.m., reconvening at
14 1:17 p.m.)

15 ALJ DION: We are back on the record in the
16 LiveWire matter.

17 Just to let counsel and those representing
18 themselves and other entities know, I am planning on
19 another break probably around quarter to 3:00 and then we
20 will go until about 4:30, 4:45 so that we can discuss the
21 remainder of the schedule to see where we are then and
22 determine, you know, what is going to take place next so
23 that we are able to efficiently handle this case.

24 Tomorrow we have an open meeting at the
25 Corporation Commission and I have a couple items that will

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1 be presented so I will be doing that. So we will move to
2 Wednesday.

3 But I would like to get some more information
4 at the end of the day to determine kind of how long you
5 think it will be and things of that nature. So I just
6 wanted to let everybody know that.

7 Mr. Bostwick, you remember you are still under
8 oath, sir?

9 THE WITNESS: Yes, I do.

10 ALJ DION: Okay. Mr. Wetherald, you had some
11 questions, sir?

12 MR. WETHERALD: Yes.

13 BY MR. WETHERALD:

14 Q. Mr. Bostwick, how did you first learn of my
15 alleged problems in Oregon?

16 A. I believe they surfaced in response to some
17 data requests.

18 Q. Which data requests?

19 A. I would have to double-check.

20 Q. Could you do that, please?

21 A. The data request was sent on January 14th,
22 2003. And it is the Staff's first set of data requests to
23 The Phone Company Management Group, LLC. The question you
24 responded to was Staff 127.

25 Q. Can you read that question?

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1 A. The question reads: Has a complaint ever been
2 filed against you or your affiliates, stockholders,
3 officers or directors in any state alleging you provided
4 telephone service in that state without necessary
5 regulatory authority? List the state and disposition of
6 the complaint including fines and penalties.

7 Q. And what did I answer?

8 A. I'm only going to read the part that
9 references the state of Oregon.

10 Mr. Wetherald was also the subject of a
11 proceeding in the state of Oregon in 1991 but does not
12 have documentation available to him to inform the Staff of
13 the nature of proceedings and its disposition other than
14 to state that Mr. Wetherald signed a three-year consent
15 decree without admitting any liability and that the
16 subject matter involved prepaid long-distance service.
17 Mr. Wetherald complied with the terms of the consent
18 decree.

19 Q. But that wasn't when you first learned of the
20 issues in the state of Oregon, is it?

21 A. I believe it is just on that response.

22 Q. Really. Who prepared the complaint draft by
23 the Staff?

24 A. Who complained?

25 Q. Who prepared the complaint, the amended

1 complaint, who prepared it?

2 A. It is signed by Maureen Scott, attorney.

3 Q. By who?

4 A. Pardon me?

5 Q. It was signed by who?

6 A. Maureen Scott.

7 Q. Did you review the complaint prior to it going
8 out?

9 A. I reviewed the complaint, yes.

10 Q. Could you turn to page 5 of the complaint?

11 ALJ DION: Mr. Wetherald, can you speak into
12 the microphone, please.

13 MR. WETHERALD: I am sorry. Bring it up a
14 little closer.

15 THE WITNESS: Your complaint is referencing
16 the amended complaint?

17 BY MR. WETHERALD:

18 Q. Yes, the amended complaint. Could you read
19 paragraph 14?

20 A. On or about September 20th, 2000, Staff was
21 apprised by several of the general partners of The Phone
22 Company of Arizona, LLP, that Mr. Wetherald and On Systems
23 Technology, LLC, were taking actions on behalf of The
24 Phone Company of Arizona Joint Venture without their
25 authorization. Staff was also apprised by several of the

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1 general partners of The Phone Company of Arizona, LLP, of
2 several investigations that other state commissions
3 involving other telephone companies owned or managed by On
4 Systems Technology, LLC and other states.

5 Q. You were also sent some data requests by us to
6 the utility guys or Staff of ACC to which you responded,
7 is that correct?

8 A. I believe there were some data requests.

9 Q. Unfortunately I don't have those with me, but
10 I believe in that, the respondent -- do you know who
11 responded to those?

12 A. On the data request that you sent us?

13 Q. Yes.

14 A. I don't recall.

15 Q. Since I don't have that stuff here I guess I
16 probably won't go too far into that. But are you sure
17 that you didn't first learn of the issues in Oregon and in
18 Washington from the partners?

19 A. I don't recall learning that from the partners
20 what?

21 Q. Of the LLP.

22 A. I don't recall learning anything about Oregon
23 specifically or Washington.

24 Q. Okay. Do you recall -- well, were you in the
25 initial meeting on September 20th with the partners?

1 A. There was a meeting with investors at the
2 time. But I wasn't there the whole time, I don't think.
3 They might have come early.

4 Q. So there may have been information divulged
5 prior to or after but you don't recall?

6 A. The best of my recollection, yes.

7 Q. So have you done any investigation of your own
8 as to what the nature of the complaint in Oregon was?

9 A. Just your response.

10 Q. Have you relied on any other information other
11 than my response?

12 A. I haven't.

13 Q. Okay. So you haven't relied on any
14 information other than my responses?

15 A. Just what I stated in my direct testimony.

16 Q. So you don't know whether or not the issues in
17 Oregon involved the provision of service without a
18 license, do you?

19 A. Well, I only know that it relates to prepaid
20 service.

21 Q. But you don't know whether or not the company
22 operated --

23 A. I don't have specifics to that.

24 Q. Did you call and ask anybody?

25 A. I didn't personally.

1 Q. Did you check public records?

2 A. I don't recall doing any public record.

3 Q. Okay. How did you learn about the issues in
4 Washington?

5 A. I think it is in the same response that you
6 have here that I cited, the data requests, January 14th.

7 Q. Okay. Do you know what the outcome was of the
8 Washington action?

9 A. I think you signed a consent decree, I
10 believe, in Washington, also.

11 Q. Was I found guilty of providing service
12 without a license?

13 A. I don't have specifics of that.

14 Q. To the best of your knowledge.

15 A. I am sorry, sir?

16 Q. To the best of your knowledge.

17 A. I am trying to recall. And I just can't
18 recall offhand.

19 Q. Was I permanently enjoined from ever doing
20 business in Washington with a telecommunication company?

21 A. I think you signed a permanent consent decree
22 to be enjoined, yes.

23 Q. But does that consent decree enjoin me from
24 ever doing business in Washington?

25 A. I don't know the specifics of that. When you

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1 say business, I don't know what that means. You mean
2 phone business?

3 Q. Any.

4 A. Any kind of business? I can't, I can't answer
5 that.

6 Q. How about the phone business?

7 A. I can't answer that, either.

8 Q. But yet you are using that in this to impeach
9 my character and ability to operate a phone company,
10 aren't you?

11 A. Well, I think that was given to me also, I
12 recall that we had a meeting with you and Mr. Glaser later
13 on. At another time Mr. Glaser brought that up, that
14 consent decree was signed.

15 Q. Where did you get a copy of the consent
16 decree?

17 A. I don't have it.

18 Q. Are you sure about that?

19 A. I mean I don't have it right here with me.

20 Q. Are you sure about that? Why don't you check
21 your exhibits.

22 A. I have a lot of exhibits.

23 Q. Of your prefiled testimony, Exhibit JFB-6.

24 A. Yes, it is a copy.

25 Q. What?

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1 A. It is a copy.

2 Q. Is there any, is there anywhere in there --
3 first of all, Mr. Bostwick, you can take a few minutes to
4 look at it -- where I have been found or agreed to or
5 consented with the notion that I offered service without a
6 license?

7 A. I am unable to locate it.

8 Q. It is not there, is it?

9 A. I haven't read it word for word in the sense I
10 can find it right this minute.

11 Q. Well, you can either agree with my attestation
12 it isn't there or you can read it word for word and
13 confirm it.

14 A. Okay.

15 I can't find it.

16 Q. Mr. Bostwick, after reading this word for
17 word, am I enjoined from owning or operating a telephone
18 company in the state of Washington?

19 A. I am relying on the answer to your data
20 request.

21 Q. Mr. Bostwick, you just read the document, you
22 just read the consent decree. Does that consent decree
23 enjoin me from ever owning or operating a telecom company,
24 long distance or otherwise, in the state of Washington?

25 A. Not by this consent decree.

1 Q. Do you have any other information that would
2 lead you to believe that there is something else that
3 does?

4 A. Not at this time.

5 Q. Did you read this document prior to filing
6 your testimony?

7 A. I did, I did see it at one moment of time.

8 Q. I didn't ask you if you saw it. Did you read
9 it?

10 A. I read it.

11 Q. Okay. So you knew when you filed your
12 testimony that I had never been permanently enjoined in
13 Washington, didn't you?

14 A. I am going by what was given to me.

15 Q. Is this an official document from a court?

16 A. It is a copy.

17 Q. I suppose -- I laugh. That is official, but
18 it is only a copy. That would basically be official in
19 the sense that it would indicate the disposition of the
20 matter; would that be a fair statement?

21 A. That's correct.

22 Q. You also rely in your testimony, if you would
23 turn to exhibit JFB-8 --

24 ALJ DION: For the record, can you tell what
25 that is, Mr. Wetherald?

1 MR. WETHERALD: It is a copy I guess of some
2 sort of article. To be honest with you, I am not even
3 sure what it is. So we are going to talk about it.

4 BY MR. WETHERALD:

5 Q. Are you ready?

6 A. Sure.

7 Q. Now, in your testimony there are several
8 places, and if you want to go back and find them, you
9 refer to information received from this article. Do you
10 know where this article came from?

11 A. It says on here Qwest legal department.

12 Q. Who gave it to the Commission?

13 A. I believe channeled through from a data
14 request but I am not sure offhand.

15 Q. Why don't you make sure.

16 MR. HORTON: Your Honor, was there a question
17 there?

18 ALJ DION: Well, I think so. He said why
19 don't you make sure on that. It indicates to me --

20 Mr. Bostwick, do you have, in efforts to move
21 this along, do you have any idea how Staff got this
22 particular article?

23 THE WITNESS: I would have to look. I don't
24 recall from it direct. I would have to look for it.

25 ALJ DION: Okay. Mr. Wetherald,

1 cross-examination, if you would like to lead him, if
2 you --

3 MR. WETHERALD: I have real problems -- oh, I
4 am sorry.

5 ALJ DION: That's okay. She has to write this
6 down.

7 If you would like to lead him and ask him a
8 question like, Staff or Mr. Bostwick, is it true that you
9 got this request, those types of questions are certainly
10 within your purview and might actually move us along
11 quicker.

12 MR. WETHERALD: Actually, Your Honor, I know
13 he thinks he got it from Qwest.

14 BY MR. WETHERALD:

15 Q. But if you look at the top, Mr. Bostwick, of
16 that article, what is the date stamp on the article from
17 the Qwest legal department?

18 A. It says April 3rd, '02.

19 Q. And this proceeding wasn't even started until
20 when?

21 A. March. Oh, proceeding today?

22 Q. When was the original complaint filed in this
23 proceeding?

24 ALJ DION: I am going to take judicial notice
25 that it is October of '02, somewhere in that time frame,

1 Mr. Wetherald.

2 BY MR. WETHERALD:

3 Q. So either you received this from Qwest several
4 months before this was even at issue, or somebody else
5 gave it to you; would that be a fair assumption?

6 ALJ DION: I am going to categorize it because
7 actually there are three things. Either Staff received
8 this prior to the filing of the complaint by Qwest, they
9 filed after the filing of Qwest, or they received it by
10 someone else.

11 Do you know which of the three?

12 THE WITNESS: I do not at this time.

13 BY MR. WETHERALD:

14 Q. Okay. Yet you rely on this document in your
15 testimony and you have no idea where it came from?

16 A. No. I just don't know where it came from
17 right now.

18 Q. Okay. Did you take any steps to verify the
19 validity of this document?

20 A. No, other than the fact that it says from
21 Qwest legal department.

22 Q. Do you know who wrote this article?

23 A. I do not.

24 Q. Do you know where it was published?

25 A. I do not.

1 Q. Do you know whether that was published by a
2 reputable news agency?

3 A. I don't know that either.

4 Q. Can you tell me anything about this document
5 that would lead you to believe that it is either reliable
6 or accurate?

7 A. The only thing I know is it says Qwest, it
8 came from Qwest legal department.

9 Q. Did you talk to somebody at Qwest about it?

10 A. No, I didn't.

11 MR. WETHERALD: Your Honor, since Mr. Bostwick
12 can't seem to verify where, what, how, when or anything
13 else that this article came from, I would like to move
14 that we strike it.

15 ALJ DION: Mr. Horton, your thoughts, sir?

16 MR. HORTON: Your Honor, until we have had a
17 chance to -- what Mr. Bostwick has actually testified to
18 is at this moment he can't recall how Staff was able to
19 establish the veracity and where this came from. We have
20 got boxes full of records. And I don't think Mr. Bostwick
21 should be expected at the snap of his finger to remember
22 everything.

23 If, after we have done redirect, if we are
24 unable to establish that we had the proper foundation to
25 harbor belief in this article and to its veracity, at that

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1 time I think it would be proper to rule on the motion.

2 ALJ DION: I understand. On the other hand,
3 you have boxes and boxes of records, but you chose nine,
4 ten or eleven for his specific testimony. And there
5 should be more than just a vague familiarity with it,
6 considering this is what we have here and this is what we
7 are going to allow.

8 If you are able to verify the article and give
9 me information, I will give Staff the opportunity to do
10 so. However, I understand your point about boxes and
11 boxes but you have specifically chosen various exhibits
12 for me to consider. And if we are going to have to go
13 through this for each exhibit, it is going to be a very
14 long and arduous process.

15 So I am not going to strike it at this point,
16 Mr. Wetherald, but I will keep your motion open until
17 there is a chance for Staff to ask some clarifying
18 questions. I do think that is appropriate.

19 But, additionally, I think this would move
20 along a little bit smoother, a little bit quicker if we
21 had this information now.

22 So I am going to overrule it at this point,
23 Mr. Wetherald, but please continue.

24 BY MR. WETHERALD:

25 Q. Mr. Bostwick, in your prefiled testimony you

1 assert that I bankrupt three companies in five years in
2 Oregon and Washington. Do you remember that assertion?

3 A. I don't know where, I don't know exactly where
4 that is. I don't recall that number.

5 Q. Well, why don't we go look at it and we
6 can -- if you would turn to page 17 of your prefilled
7 testimony. Are you there?

8 A. Yes.

9 Q. Starting at line 13, could you read that for
10 me?

11 ALJ DION: Mr. Wetherald, can I make a
12 suggestion?

13 Mr. Bostwick, why don't you review line 13
14 through line 21. And at the conclusion of you reviewing
15 that, Mr. Wetherald is going to ask you a question.

16 MR. WETHERALD: I am sorry. I don't mean to
17 draw this out.

18 ALJ DION: It is just such a long thing for
19 the court reporter to type and is in evidence already that
20 I think it is the best way to do it.

21 MR. WETHERALD: Okay.

22 ALJ DION: Mr. Bostwick, when you are through
23 reviewing, sir, just let us know.

24 THE WITNESS: All right.

25 BY MR. WETHERALD:

1 Q. Are you done with that?

2 A. Yes.

3 Q. So whether directly or indirectly, this press
4 release is relied upon by this Staff to make the
5 assumption that I took three companies into bankruptcy in
6 five years; would that be accurate?

7 A. Yes.

8 Q. Can you tell me what companies those were?

9 A. The only two that I am familiar with --

10 Q. And which two would those be?

11 A. The ones in Colorado.

12 Q. Okay. But that was just recently. That
13 wasn't Oregon and Washington, was it?

14 A. No.

15 Q. Okay. Did you do anything to verify that I
16 had in fact bankrupt three companies in Oregon and
17 Washington in a five-year time period?

18 A. No.

19 Q. Why? You were relying on the information.

20 A. I relied on the exhibit that I was given, yes.

21 Q. And you didn't verify the validity of the
22 exhibit, did you?

23 A. I didn't, I didn't inquire as to the companies
24 specifically, which companies they were.

25 Q. So anybody could print something off, hand it

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1 to you, say this is a really good document, and you are
2 going to believe it?

3 A. No. I am not saying that.

4 Q. But you did in this case, didn't you?

5 A. I just said I couldn't answer the three
6 companies. You asked me for three companies.

7 Q. I asked you whether or not you verified the
8 statement made was true.

9 A. I can't provide any evidence to that.

10 Q. Mr. Bostwick, if anybody would know whether
11 you picked up the phone or called somebody or wrote a
12 letter or did something else, it would be you.

13 A. I didn't do that.

14 Q. Did you do that?

15 A. I didn't do that.

16 Q. Thank you. In fact, Mr. Bostwick, there is
17 nothing in this record that could even approach by a
18 reasonable standard the exercise of reasonableness that
19 you could have relied on that you could say, because of
20 what happened in Oregon and Washington, you shouldn't have
21 a CC&N here, is there?

22 A. On this exhibit that you showed me or
23 Exhibit A, no, that's true.

24 Q. Is there anything else that isn't in your
25 exhibits that I am unaware of that you relied on when you

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1 came to the conclusion that this could be -- some of this
2 proceeding I should be hammered over the head over it?

3 ALJ DION: Mr. Wetherald, I have given you --

4 MR. WETHERALD: I am sorry.

5 ALJ DION: -- a long leash today.

6 MR. WETHERALD: You have and I apologize, Your
7 Honor.

8 ALJ DION: I am going to finish, though, okay,
9 just for the completeness of the record.

10 And I know you are wearing many hats today,
11 and I appreciate that but do not envy your role. However,
12 although this is a lax regulatory agency, I can't have you
13 commenting on, you know, testimony and things like that.
14 You have got to keep it more in the role of not
15 necessarily objective but advocacy without kind of
16 crossing the line. Do you understand that?

17 MR. WETHERALD: I do. I apologize.

18 ALJ DION: Okay. Please continue.

19 THE WITNESS: I am sorry. Could you repeat
20 your question?

21 BY MR. WETHERALD:

22 Q. Is there any other information --

23 I don't want the whole thing read back.

24 ALJ DION: I think I got it, Mr. Wetherald, if
25 I may.

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1 Besides the exhibit, Mr. Bostwick, was there
2 any other information that was presented to you and/or
3 relied upon by you to make the assertion regarding the
4 companies allegedly that Mr. Wetherald eventually filed
5 bankruptcy for, or was -- or operating in some cases if he
6 didn't file it, that the bankruptcy was filed on behalf of
7 those companies? Is there any other information besides
8 that exhibit?

9 That would have been much better if I would
10 have just said that.

11 MR. WETHERALD: It would have been better.

12 THE WITNESS: The only thing I have would be
13 the response to Staff's data request.

14 BY MR. WETHERALD:

15 Q. Is that the one you read previously?

16 A. No. It is a different one.

17 Q. Can you share that with me?

18 A. Sure. It is the February 7th, 2003 data
19 request and it is Staff's second set of data requests to
20 LiveWireNet of Arizona. And the question is, that we were
21 speaking at the time: Please provide the names of all
22 companies, ventures or entities which Mr. Wetherald either
23 managed or held in an ownership interest which filed for
24 protection under the bankruptcy code. Please provide the
25 name of the company, the date of the bankruptcy petition,

1 the court in which the petition was filed and the status
2 of the filing.

3 Q. And what is the listed --

4 A. The response we received was: VNI, Mile High
5 Telecom Joint Venture, bankruptcy petitions for each of
6 these companies were filed in the United States Bankruptcy
7 Court for the District of Colorado. VNI was liquidated
8 2000 pursuant to Bankruptcy Court order. Petition of
9 bankruptcy of Mile High Telecom Joint Venture is currently
10 pending.

11 Q. So there is nothing in that answer that would
12 validate the assertion made by this article it took three
13 companies to bankruptcy in five years, is there, in Oregon
14 or Washington?

15 A. That's the only information I have.

16 Q. Thank you. What do you know about the VNI
17 bankruptcy?

18 A. I don't have specifics.

19 Q. Other than the answer that I gave you in my
20 data request, have you done any research into what
21 happened with VNI?

22 A. No, I have not.

23 Q. Do you know the ownership structure of VNI?

24 A. I am sorry?

25 Q. Do you know the ownership structure of VNI or

1 what it was?

2 A. I can't recall, no.

3 Q. Do you know whether I even had fiscal or
4 managerial control over VNI?

5 A. Going by the response that I received right
6 there, that was your response to our data request.

7 Q. Well, it indicates I was an owner. But do you
8 know whether or not at all times in VNI I had managerial
9 or fiscal control?

10 A. Other than just the response that I have.

11 Q. So it is entirely possible with VNI that I
12 could have taken the company over after it had already
13 been financially destroyed by other people, isn't it?

14 A. I don't know.

15 Q. That's the problem, you don't know, do you?

16 A. That's right. That's what I said.

17 Q. Let's talk a little bit about Mile High.

18 Do you know whether I filed the petition for
19 bankruptcy in Mile High as a manager or as a creditor?

20 A. I don't know.

21 Q. Did you check?

22 A. No.

23 Q. Don't you think that would be important
24 information to know especially if it is being used in this
25 case?

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1 A. I didn't check.

2 Q. Do you know whether it was a voluntary
3 petition or involuntary petition?

4 A. I don't know that either.

5 Q. So exactly, Mr. Bostwick, of all of these
6 things being said and done, what exactly did you do to
7 make sure that they were as you are assuming or as they
8 appeared to be?

9 A. I used your response, as all I had, to the
10 data request.

11 Q. Are you prohibited from calling other people
12 and saying, gee, I have got this concern, can you tell me
13 whether it is true or not?

14 A. I am not prohibited.

15 Q. Did you do it in this case?

16 A. No, I didn't.

17 Q. Why?

18 A. I don't have an answer for you.

19 Q. So let me get this straight. You bring an
20 action which will essentially, for lack of a better word,
21 possibly sanction at least myself or my clients, could
22 possibly sanction and fine at least two other people,
23 possibly a bunch of partners, make all sorts of
24 allegations, put those allegations as fact in your
25 testimony and yet you did absolutely no independent

1 research as to the veracity of the statement?

2 MR. HORTON: Your Honor, I think the question
3 has been asked and answered about three times now.

4 ALJ DION: I think independently probably all
5 those questions have been asked and answered. But I think
6 Mr. Wetherald is making kind of a summary statement
7 regarding the various answers of Mr. Bostwick. And so I
8 am going to overrule it. I am going to allow him to
9 answer that question.

10 THE WITNESS: I didn't make any inquiries by
11 phone or by letter.

12 BY MR. WETHERALD:

13 Q. Let's turn to the ACC matter. Have you talked
14 to anybody at SEC?

15 A. I personally have not.

16 Q. Who did?

17 A. I don't know who did. I mean I have got
18 material from off the internet and reviewed that.

19 Q. So all you know with regard to the SEC is they
20 are alleging I am violating securities laws?

21 A. That's what the article said in your response.

22 Q. So just as a general question, what would my
23 violation of a security law have to do with the anything
24 in this proceeding?

25 A. I have no idea as far as the securities go.

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1 Q. What does that case have at all to do with
2 this proceeding?

3 A. I think it was just a view of character and
4 answer to the questions of have you had any pending
5 matters before any regulatory agency.

6 Q. Were those matters pending at the filing of
7 this complaint?

8 A. There were many matters so I don't know which
9 one.

10 Q. The SEC matter.

11 A. There could be several. I don't know the
12 resolved --

13 Q. There is only one SEC matter. It is all
14 referred throughout your testimony. Was it pending before
15 the filing of this complaint?

16 A. I don't recall.

17 Q. This complaint was filed in October?

18 A. About that time.

19 Q. And did you bother to read your own exhibits?

20 A. I read them.

21 Q. So about what time frame was the complaint
22 filed with the SEC?

23 A. I don't recall.

24 Q. Why don't we look.

25 Your testimony on Exhibit JFB-1, will you turn

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1 to the very last page of that exhibit? First of all, why
2 don't we identify the exhibit. What is this exhibit,
3 Mr. Bostwick?

4 A. Up at the top it says U.S. Securities and
5 Exchange Commission in bold, black background.

6 Q. Okay. So this is a complaint that is being
7 referred to in your testimony?

8 A. It is introduced as an exhibit, yes.

9 Q. On the very last page of that complaint, do
10 you see a date down at the bottom which will tell you when
11 this could have possibly been filed?

12 A. Are you saying the very last page?

13 Q. Yes, I believe. It is the second to the last
14 page, I am sorry.

15 A. The date I have is 2/11/03.

16 Q. No, no, no. Look up a little farther. It
17 says respectfully submitted. It is probably on the same
18 page. Unfortunately these aren't numbered so I can't give
19 you an exact page number.

20 A. I don't --

21 ALJ DION: I am just going to take judicial
22 notice. Second to the last page: Respectfully submitted,
23 February 7th, 2003, by Kathleen A. Ford, who is Florida
24 Bar counsel for the SEC.

25 BY MR. WETHERALD:

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1 Q. So we know from prior testimony and the
2 complaint that the complaint filed here was originally
3 filed in October, correct?

4 A. Yes.

5 Q. Of 2002. This was filed in February of 2003,
6 correct?

7 A. I don't have that copy, but --

8 ALJ DION: "This" meaning?

9 MR. WETHERALD: The SEC complaint.

10 ALJ DION: The SEC complaint was filed in
11 February 2003, is that correct, Mr. Bostwick?

12 THE WITNESS: I must have got this out of
13 order. Give me that exhibit again.

14 BY MR. WETHERALD:

15 Q. It is the first exhibit. It is labeled JFB-1.

16 A. Right.

17 ALJ DION: If you go to the second to last
18 page, Mr. Bostwick, at the very bottom, there is kind of a
19 signature block.

20 THE WITNESS: My copy must be mislabeled. I am
21 sorry. Okay. Now I see it. I have got it.

22 ALJ DION: Okay. Mr. Wetherald asked you at
23 the original complaint was filed in October of 2002,
24 correct? Sometime in October of 2002, is that correct,
25 Mr. Bostwick?

1 THE WITNESS: Yes.

2 ALJ DION: Subsequently, in February of 2003,
3 the SEC filed its complaint, is that also correct?

4 THE WITNESS: That's correct.

5 ALJ DION: Mr. Wetherald, please continue.

6 BY MR. WETHERALD:

7 Q. So explain to me what this complaint has to do
8 with this, or the SEC allegations have to do with this
9 complaint.

10 A. Well, it identifies you and others that also
11 submit an application for CC&N.

12 Q. Did we submit the application before or after?

13 A. Before.

14 Q. So this wasn't even pending when we submitted
15 the application, was it?

16 A. No.

17 Q. Even if this complaint at some point in time
18 would prove to be true and the allegations against me --
19 let me start over.

20 Has the SEC or any other court found me guilty
21 of any of the allegations in this complaint?

22 A. I am not aware of it.

23 Q. So this complaint is here for what reason?

24 A. I believe the -- it points out in your
25 application to determine what was going on with all the

1 members that applied for CC&N, the members, including
2 yourself and others.

3 Q. But, Mr. Bostwick, we have already
4 established -- when was my application for a CC&N filed
5 with this state?

6 A. I believe it was sometime in the summer of two
7 thousand --

8 Q. July, 2002?

9 A. Right, that sounds right.

10 Q. This was filed in February 2003. How are the
11 two related? Was I supposed to disclose something that
12 hadn't happened yet?

13 A. No. But we have the right to review that
14 material.

15 Q. Okay. But assuming that you had reviewed that
16 material, it had been, the CC&N had been granted prior to
17 this filing, are you asserting this filing would have been
18 justification for the Commission to revoke my CC&N?

19 A. You didn't have one to revoke.

20 Q. Well, it had been granted.

21 A. I don't want to deal in hypotheticals.

22 Q. Are you -- you are not using this complaint,
23 the SEC complaint to impeach my character to stop me from
24 holding a CC&N in Arizona?

25 A. I didn't use it to stop.

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1 Q. It is in your testimony, isn't it?

2 A. No. I am just saying that it is -- I said it
3 could be reviewed. I didn't say that I was using it to
4 stop. You didn't -- you applied for a CC&N. Then you
5 cancelled it.

6 Q. Okay. But you are using it in this proceeding
7 as a basis for revoking my CC&N, aren't you?

8 A. I am using it as an exhibit, yes.

9 Q. But it is being used as a basis, in other
10 words, your testimony to say I am an unfit and improper
11 person is largely based on this complaint, is it not?

12 A. In this complaint, yes.

13 Q. From the SEC?

14 A. Not the SEC, the ACC's complaint. This is a
15 part of it.

16 Q. But, Mr. Bostwick, in this particular
17 allegation that I am a fit and proper person, and we can
18 count the pages, Mr. Bostwick, you spent pages talking
19 about whether there was management structure and nine
20 pages about whether or not I am a moral guy, largely most
21 of that is based on this complaint from the SEC?

22 A. I wouldn't say largely. I say some of it.

23 Q. Well, you have really four things in there
24 that would point to that. One of them is the Oregon
25 action, one of them is the Washington action, the

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1 assertion that I bankrupt three companies in Oregon and
2 Washington in five years, a bankruptcy with VNI and
3 bankruptcy with Mile High and then the SEC complaint;
4 would that be fair?

5 A. That's correct.

6 Q. Okay. So you are saying that this Commission
7 should be allowed to revoke or sanction me on the
8 allegations that are yet proven to even be true?

9 A. I don't know the status of those allegations,
10 so I can't comment on that.

11 Q. Are they proven to be true that you know of
12 yet?

13 A. Not proven that they are untrue.

14 Q. So the ACC's view, they have absolutely no
15 requirement to assert that I am innocent until proven
16 guilty?

17 A. No. I am just saying that I used it as an
18 exhibit.

19 Q. Okay. You didn't talk to anybody at the SEC.
20 Did you talk to any of these people involved and ask them
21 whether or not I had sold them unregistered securities?

22 A. No, personally I did not.

23 Q. So you didn't. Did you do anything to
24 ascertain whether or not the allegations as represented by
25 the SEC were in fact true or accurate in your mind?

1 A. No. I reviewed the material, the exhibits,
2 used that to support what I wrote.

3 Q. So this material isn't even really hearsay.
4 It is beyond that. It is printed pages on a piece of
5 paper that you did no due diligence on, is that correct?

6 A. I didn't make any phone calls or e-mails or
7 letters.

8 Q. Mr. Bostwick, earlier you testified that you
9 wouldn't use the word morality in this proceeding. Do you
10 remember that?

11 A. That's right.

12 Q. So when we start talking about somebody who is
13 supposedly, quote, unquote, not a fit and proper entity,
14 when there is a total lack or void of any substantive
15 document that would say that he has ever been convicted,
16 consented to, agreed to, or anything else in any other way
17 found guilty of fraud, of malfeasance, of any other kind
18 of things that might be sanctionable, there is no hard
19 evidence anywhere in your testimony, you can't point to it
20 here, and yet you bring this in, aren't we really talking
21 about what you are alleging is about whether or not I am
22 morally fit?

23 A. My definition of moral and yours might be
24 quite different. I am not using the word moral. You
25 don't see it in my direct testimony.

1 Q. Now, basically isn't your direct testimony
2 about whether or not I am a good guy or bad guy?

3 A. I don't refer to you as a good guy or a bad
4 guy.

5 Q. No. You just basically say I am improper and
6 unfit.

7 A. I don't think I used improper, and maybe I
8 did.

9 Q. You are right. You didn't use the word
10 improper. You say is not a fit and a proper entity. It
11 wasn't improper, it just kind of carries over from the
12 previous statement. Isn't that what a reasonable person
13 would conclude is a moral judgment?

14 A. Well, I don't know what a reasonable person
15 would conclude. I don't want to get into moralities.

16 Q. Okay. Is there any statute or rule that you
17 are aware of in Arizona that would bar me from holding a
18 CC&N even if I bankrupt six million companies?

19 A. Well, if I knew that ahead of time you
20 wouldn't get a license.

21 Q. Well, we understand that because there is a
22 certain amount of prejudice here. But is there a rule
23 saying that I could not hold --

24 MR. HORTON: Objection.

25 ALJ DION: I am going --

1 MR. WETHERALD: You are right.

2 ALJ DION: Mr. Wetherald, I think what he is
3 getting to, if someone applied to the Commission with the
4 six million bankruptcies, they might come under scrutiny
5 as to whether they might receive a license here or not.
6 So I don't --

7 BY MR. WETHERALD:

8 Q. I guess my point is: Is there a rule
9 prohibiting me from holding a license just because I filed
10 bankruptcy?

11 A. I am not aware of any rule.

12 Q. So if it were to be denied or any way
13 scrutinized, it would be based on your interpretation of
14 what your general grant of authority is?

15 A. It would be denied, it would be denied by the
16 Commissioners, not by me.

17 Q. Okay. If -- but it would, it would not be
18 denied based on the specific rule or condition, it would
19 be denied based on a general interpretation of authority;
20 would that be a fair statement?

21 A. No. It would be denied based on your
22 application.

23 Q. That's a matter of law so we will have to
24 leave it since I will probably be ejected with my next
25 question. Okay?

1 ALJ DION: While we have got a break,
2 Mr. Wetherald, we are about 45 -- hold on. We are at the
3 45-minute marker. Are we getting to the end of Count Two?

4 MR. WETHERALD: Yes, pretty --

5 ALJ DION: Another 10, 15 minutes?

6 MR. WETHERALD: Probably another 20. I will
7 try and make it 20.

8 ALJ DION: Because I am going to take the
9 break close to the half hour just to let you know.

10 MR. WETHERALD: Okay.

11 BY MR. WETHERALD:

12 Q. Mr. Bostwick, the assertion that I am unfit or
13 not a fit and proper entity is entirely based on what
14 could at best be classified in the best of light as
15 absolute circumstantial; would you agree with that?

16 A. Can you rephrase that a little bit for me?

17 Q. Well, let me put it this way: Is there
18 anything that you can show this proceeding in the way of
19 actual concrete fact, and I will define that by either an
20 official document, okay, from a court or other
21 jurisdiction, admission or in any other way that would
22 tell you that I am guilty of any of the things such as
23 fraud, malfeasance, operating without a license, duping
24 the commission of other states, any of that stuff, is
25 there any credible evidence or fact in this proceeding

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1 that this Administrative Law Judge could put his hands on
2 and say this is hard evidence?

3 A. Well, I find that you don't have a CC&N to
4 operate here the way you have been operating.

5 Q. Well, we have already gone through this a
6 number of times, Mr. Bostwick. And that would be an issue
7 of law, wouldn't it?

8 A. I don't find you have a CC&N to do the
9 business you were doing.

10 Q. That's not what you testified to earlier.

11 A. Well, where is your CC&N?

12 Q. I thought you said Phone Company Management
13 Group did hold a CC&N?

14 A. They do. But you weren't doing business as
15 that.

16 Q. Well, you already testified that you have no
17 other evidence other than the name.

18 A. You billed the consumer differently.

19 Q. And you can testify with absolute certainty
20 that the name on that bill didn't refer to The Phone
21 Company Management Group?

22 A. Yes, I can say that.

23 Q. I asked you that question earlier and you said
24 you couldn't. What changed between the last few hours?

25 A. I am saying is that your -- when we say that,

1 Phone Company Management Group, you have to say the whole
2 company, use the d/b/a.

3 Q. That's a legal requirement? I mean, it --

4 A. You are the one that changed the name of the
5 company.

6 Q. Well, I don't remember changing the name to
7 Phone Company Management Group. Anyway --

8 ALJ DION: We were going to move on. I don't
9 recall, and just state for the record, I don't recall us
10 getting too far afield into the billing dispute. As a
11 matter of fact, I recall us avoiding names as much as
12 possible.

13 MR. WETHERALD: Yes. I am not talking about
14 the billing dispute with Qwest. I probably meant --

15 ALJ DION: No. The billing dispute meaning
16 the name of the bill and whether or not PCMG has --

17 MR. WETHERALD: Okay.

18 ALJ DION: -- has appeared on the bill.

19 BY MR. WETHERALD:

20 Q. But even in that instance, Mr. Bostwick, have
21 I been found guilty? Has there been a determination by
22 this proceeding that I was back offering service without a
23 license?

24 A. This proceeding isn't over yet.

25 Q. Okay. But you just said other than here I

1 was. So that's not a hard evidence for this judge to put
2 his hands on anyway, is it?

3 A. Well, I am -- I guess not.

4 Q. Okay. So your entire assertion and claim is
5 relying 100 percent on speculation and nothing else?

6 A. No, I can't say that.

7 Q. Well, so far, Mr. Bostwick, you have entered
8 evidence and not told us anything other than that. You
9 got it, you put it in here, you testified about it, but
10 you didn't verify any of it. That to me would define
11 speculation. Do you have another definition?

12 A. Well, your data request and the response that
13 you made. If you did that 100 percent, you would be
14 saying you lied.

15 Q. Did I lie?

16 A. I don't know. Did you?

17 Q. Do you have any proof I lied?

18 A. I don't know if you told the truth yet or not.
19 That's why we are having this proceeding today, and Your
20 Honor will make that decision.

21 Q. Do you have anything that tells you I didn't
22 tell the truth?

23 A. Do I have what?

24 Q. Anything that says I didn't tell the truth?

25 A. I don't have anything that says you did.

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1 Q. Mr. Bostwick, would it be a fair statement for
2 me to say that in the last year and a half I have been a
3 man of much litigation?

4 A. I don't know what you do in the last year and
5 a half, everything you do, how your time is spent. So I
6 can't really honestly give you a solid answer to that.

7 Q. Well, Mr. Bostwick, it is no public secret
8 that I am being sued by the SEC; would that be a fair
9 statement?

10 A. I don't know.

11 Q. I am being essentially, for lack of a better
12 word, sued by the State of Arizona in this proceeding;
13 would that be a fair statement?

14 A. The only thing I know is we have a formal
15 complaint.

16 Q. Okay. You are also aware that there was an
17 investigation in the state of Colorado, wasn't there?

18 A. I have read about it. I don't know the
19 details of it. And you have admitted to it in the data
20 requests.

21 Q. But as a matter of course, Mr. Bostwick, in
22 all of these proceedings have you seen anything in any
23 document, deposition, rulings of the court, testimony,
24 cross-examination, I don't care what, where, how, that I
25 was ever impeached for lying?

1 A. No. But then I haven't seen everything.

2 Q. Have you looked?

3 A. I am not privy to everything. I don't get
4 everything.

5 Q. Most of this is public record. Have you
6 called somebody and asked them for it?

7 A. Well, like I said, I don't know that I have
8 gotten everything.

9 Q. But you wouldn't call what you have here
10 speculation, would you?

11 A. I wouldn't.

12 Q. You would call it good, sound investigative
13 technique?

14 A. No. I just call the exhibits that I
15 furnished, the material I wrote based upon your data
16 response that you gave us, plus other information we
17 collected.

18 Q. The third count --

19 ALJ DION: I am going to interrupt you then if
20 we are going to take a break because we are close.

21 Why don't we take a 15-minute break. And,
22 Mr. Bostwick, you will be back on the stand at 20 to 3:00,
23 anticipating going to approximately 4:00 or so, maybe a
24 little after, try to get a little bit more done today.

25 But like I said, because of the unique

1 circumstance, we would usually go tomorrow, but since we
2 are not, I need to make some arrangements to determine
3 what time we are going to start and we will know
4 essentially how much further along we will be at that
5 point.

6 But until then, let's go ahead and take the
7 15-minute break and we will all appear back here at 20 to
8 3:00.

9 (A recess ensued.)

10 ALJ DION: Okay. We are back on the record.
11 Mr. Wetherald was continuing his cross of Mr. Bostwick,
12 who is still under oath.

13 Do you remember that, Mr. Bostwick?

14 THE WITNESS: Yes, I do.

15 ALJ DION: Okay, Mr. Wetherald.

16 BY MR. WETHERALD:

17 Q. Mr. Bostwick, could you real quickly turn with
18 me to Exhibit No. JFB-3 of your testimony. Are you there?

19 A. Yes, I am.

20 Q. Can you identify this exhibit for me?

21 A. It is titled Con Air Mile High Telecom
22 promised to be an alternative to Qwest, but the line is
23 going dead. And it is written by Stuart Steers.

24 Q. And where did this exhibit come from?

25 A. It came from the internet.

1 Q. Who pulled it off, do you know?

2 A. I can't recall who actuality pulled it.

3 Q. Did you do it?

4 A. No, I didn't do it.

5 Q. And you don't recall who did?

6 A. No, I don't. I have read it but I don't
7 recall who pulled it.

8 Q. Did you call and verify and check to make sure
9 that the allegations contained in the article were in fact
10 true?

11 A. No, I did not.

12 MR. WETHERALD: Okay. Your Honor, at this
13 time I am going to make a motion that Mr. Bostwick's
14 testimony on page 13, line 13 all the way through page 20,
15 line 4 be stricken. Mr. Bostwick has not shown anything
16 to this court that would rise to the level of credible
17 evidence. It is all hearsay and speculation, didn't do
18 any evidentiary work personally to verify anything in here
19 was true or accurate through this section and it is
20 improper. It shouldn't be allowed. That is prejudicial
21 and it is discriminatory.

22 ALJ DION: Okay. I am going to, I am going to
23 overrule it.

24 Number one, I asked about S-1 and nobody had
25 any objections being entered into the record. Second, I

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1 think there is some questioning brought up of
2 Mr. Bostwick's -- or the reasons why he relied on some of
3 this testimony. And, again, I am going to wait until
4 Staff has that. But at the conclusion of that, if I
5 forget, because we are going to be skipping into anything,
6 although I do take notes, I would encourage you to help me
7 remember to reurge to that motion.

8 MR. WETHERALD: Okay.

9 ALJ DION: Thank you.

10 BY MR. WETHERALD:

11 Q. Moving on to Count Number Three, Mr. Bostwick,
12 at the end of this day, Mr. Bostwick, you have one thing
13 to be thankful because I don't have a whole lot in here
14 plus, to throw you a little bone, I think this whole count
15 is somewhat superfluous at this point, but I do want to
16 deal with a couple issues.

17 Although this is, and I understand this so
18 please don't confuse that I am trying to at this point
19 come back in any way and say PCMG is now financially
20 capable of doing anything, at the time this complaint was
21 filed, the financial viability of PCMG to a very large
22 extent was really centered on and around its ability to
23 pay Qwest. Would that be an accurate statement?

24 A. Financial viability of --

25 Q. Right.

1 A. I don't know who else you owe. I mean, I have
2 no idea. I am not the company. I don't --

3 Q. But to a large degree, the assertion that I
4 didn't have, or PCMG, that PCMG was not financially
5 adequate to continue to provide service centers around the
6 fact that they owed Qwest a lot of money; would that be a
7 fair assertion?

8 A. They owe Qwest some money, right.

9 Q. And all things being equal, because I don't
10 believe anybody in this room knows for certain, that this
11 would be an entirely different case if PCMG either paid
12 Qwest or it was found they didn't owe Qwest some money,
13 would that be possibly a fair assumption?

14 A. I don't think I want to assume that.

15 Q. Okay. I am not going to get into specific
16 numbers because at this point they are really kind of what
17 they are. I mean, they are all through the record. So I
18 mean, unless Mr. Dion would like me to, I would just like
19 to talk in some general terms here.

20 But it is undisputed that Qwest at some point
21 asserts that we owed them money, correct?

22 A. I have read that, yes.

23 Q. And it is also undisputed that we said we
24 didn't owe Qwest money. We disputed that money, correct?

25 A. You have made assertions that you dispute what

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1 you owe.

2 Q. I am just talking about the assertion. Do you
3 know whether or not, Mr. Bostwick, that Qwest is allowed
4 to terminate, discontinue, or in any way interrupt
5 services to a CLEC under the SGAT if they are disputing
6 the charges?

7 A. I know that Your Honor, the ALJ here, ordered
8 that Qwest terminate service.

9 Q. I didn't ask whether he ordered that Qwest
10 terminate. Plus Your Honor, I would --

11 ALJ DION: I am going to clarify the record.

12 MR. WETHERALD: I was going to, yes.

13 ALJ DION: I never ordered Qwest to terminate
14 service nor did this Commission. I think Mr. Wetherald's
15 question is are you familiar with the SGAT, which is the
16 connection, the interconnection agreement. It is a
17 standard agreement between a wholesale provider and
18 reseller. There is one that allegedly existed between
19 Qwest and PCMG. Are you familiar with that agreement at
20 all?

21 THE WITNESS: No, other than the fact that it
22 exists and the details I don't know.

23 ALJ DION: Okay. So assuming from that that
24 you don't have any details about that, you couldn't tell
25 me whether or not one of the remedies under the contract

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1 for nonpayment is for Qwest to terminate service to PCMG,
2 right?

3 THE WITNESS: Right.

4 ALJ DION: Mr. Wetherald, is that essentially
5 your question, sir?

6 MR. WETHERALD: Right.

7 MR. HORTON: Just for clarification sake, it
8 was my impression that there was an interconnection
9 agreement that was different than the SGAT that was a
10 negotiated interconnection agreement. So the terms may
11 not be the same as SGAT. Correct me if I am wrong.

12 MR. WETHERALD: No. That was the SGAT.

13 ALJ DION: Can you say for the record what
14 SGAT stands for?

15 BY MR. WETHERALD:

16 Q. Standard generally available terms. However,
17 this Commission is the body or regulatory agency that
18 governed the SGAT with Qwest on behalf of competitive
19 carriers, correct? Let's try it this way maybe,
20 negotiate.

21 ALJ DION: Negotiate is probably going to be a
22 tough word, Mr. Wetherald. Go ahead. Why don't you
23 rephrase that.

24 BY MR. WETHERALD:

25 Q. The Commission had to approve the SGAT, did

1 they not?

2 A. Yes, the terms, that's correct.

3 Q. And in that regard, although I understand it
4 is somewhat different, it is somewhat analogous, if you
5 will, to a tariff, correct?

6 A. With relative to terms and conditions, yes.

7 Q. In as far as that is concerned, would it be
8 the Commission's responsibility to enforce those terms and
9 conditions of the SGAT?

10 A. I really couldn't answer that.

11 Q. Let me ask you a more general question. If
12 you discover that a carrier is violating its tariff filed
13 with this Commission, is it the Commission's
14 responsibility or at some point do they have the authority
15 to step in and tell the carrier to stop violating their
16 tariff?

17 A. That usually would come under a complaint.

18 Q. It would come under an adversarial proceeding
19 I understand?

20 A. Some kind of proceeding that would bring that
21 to the Commission to rule on.

22 Q. But those types of things would have to come
23 out in some sort of an adversarial proceeding or contested
24 matter, wouldn't it?

25 A. Slightly, yes.

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1 Q. In other words, the Commission just wouldn't
2 have the authority to one day wake up and say, gee, we
3 don't like what this guy is doing, let's not only tell him
4 to stop, but fine him?

5 A. I can't really answer that. I really don't
6 know. I suppose if a Commissioner saw something wrong, he
7 would, that he has an obligation to his constituent.

8 Q. But he could only do so after there was some
9 sort of evidentiary hearing allowing the other party the
10 right to answer the complaint?

11 ALJ DION: I am going to jump in a little.

12 Mr. Bostwick, in your experience there are
13 some specific CC&Ns whose, rather than granting of which
14 are conditioned upon certain conditions -- not conditions,
15 that's terrible -- but conditioned on the applicant
16 complying with some of the recommendations in the order,
17 is that correct?

18 THE WITNESS: Yes. There is a fair amount of
19 rules and regulations.

20 ALJ DION: And some of them are kind of
21 standard regulations that you have to comply with, is that
22 correct?

23 THE WITNESS: That's correct.

24 ALJ DION: And others, although standard, also
25 give you liens such as a tariff, you must file a tariff

1 within 365 days of this decision or 30 days after
2 provision of service, is that correct?

3 THE WITNESS: That's correct.

4 ALJ DION: And also language in those cases,
5 if you do not comply with the type of liens, then your
6 CC&N becomes null and void, is that correct?

7 THE WITNESS: Yes.

8 ALJ DION: That happens without a hearing?

9 THE WITNESS: That's correct.

10 ALJ DION: So there are instances where a CC&N
11 can, for example, can become null and void without a
12 hearing and actually without any real operation by the
13 Commission, it is the inaction of the applicant that
14 triggers that mechanism in the decision, is that correct?

15 THE WITNESS: That's correct.

16 ALJ DION: And there are other areas in which
17 complaints are filed and hearings take place and those
18 situations are done in sort of this adversarial section,
19 is that correct?

20 THE WITNESS: That's correct.

21 ALJ DION: So there are situations where the
22 Commission will invalidate CC&Ns without a hearing and
23 there are other situations where hearings are held; is
24 that fair enough to say?

25 THE WITNESS: That's fair enough.

1 ALJ DION: Okay. I just wanted to make that
2 clear on the record, Mr. Wetherald.

3 BY MR. WETHERALD:

4 Q. Okay. And I am going to phrase it this way,
5 because I understand and I don't want to necessarily ask
6 you for conclusions for law. That's one reason I am going
7 to try to do it this way.

8 But if the SGAT in its provisions did two
9 things -- well, first of all, if the SGAT in its
10 provisions specifically prohibited Qwest from
11 disconnecting services for the undisputed amounts, for
12 unpaid and undisputed amounts, would Qwest of its own
13 volition, okay, when I say that, meaning that they would
14 be able to just say these aren't legitimate, we are going
15 to shut it off anyway, would that be within Qwest's
16 rights?

17 A. You will have to ask Qwest.

18 Q. Do you have the authority to determine whether
19 or not a dispute is legitimate or not legitimate as a
20 Staff member of the ACC?

21 A. I don't believe I do.

22 Q. Would you say that you have a responsibility
23 to consumers, ratepayers and other people that, if you see
24 and it is brought to your attention that one party or the
25 other of either a tariff or say an agreement like the SGAT

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1 is in violation of those terms, that perhaps you have a
2 duty to possibly take some form of action?

3 A. No. The onus of any complaint, that falls on
4 the party that is doing the complaining.

5 Q. So what you are saying is that, if it came to
6 your attention that Qwest was improperly billing thousands
7 of people for services that were overcharged as to the
8 tariff, that you would do nothing about it, you would wait
9 for the consumer to do that?

10 A. No, I didn't say that. The methodology that
11 usually works, it is something that is filed, an
12 application, a petition of some sort. That gets a Docket
13 No. And then it is assigned to an analyst for review,
14 whatever. That is usually the format. I am not saying it
15 is always the format but that is usually the format.

16 Q. But, you know, like in the case of this
17 proceeding, the Commission, for lack of a better word, and
18 by this statement I am not accepting it was right by any
19 means, but the Commission basically felt they smelled
20 something funny going on, is that a fair statement, in
21 this proceeding?

22 A. Well, I don't know. I think there were a
23 number of factors that surfaced. There wasn't just a
24 smell. There was the sight of it, the noise of it. You
25 know, when you have got a lot of people calling up

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1 complaining about a phone company --

2 Q. We will get to that.

3 A. -- there has got to be something going on.

4 Q. We will get to that. But at some point the
5 Commission was able to essentially bring a motion or an
6 action of its own volition. It didn't need to wait for,
7 say, a consumer or some other third party to do so, did
8 they?

9 A. I think the formal complaint that you have
10 before you was that, yes.

11 Q. But that was an action brought by the
12 Commission, not by a third party, isn't that correct?

13 A. Well, I am trying to think back of the actual
14 offense and I can't recall every step that culminated and
15 brought the whole matter to the attention.

16 Q. Did Qwest file the complaint?

17 ALJ DION: Mr. Wetherald --

18 THE WITNESS: I don't see them in the caption.

19 ALJ DION: -- earlier you related the amended
20 complaint, Mr. Bostwick --

21 THE WITNESS: I am sorry, sir?

22 ALJ DION: The amended complaint, you remember
23 that vaguely?

24 THE WITNESS: Yes.

25 ALJ DION: And Maureen Scott signed that,

1 correct?

2 THE WITNESS: That's correct.

3 ALJ DION: Maureen Scott is with Commission
4 Staff? She is with the Legal Division with the
5 Commission?

6 THE WITNESS: Correct.

7 ALJ DION: So in this case Staff, through its
8 legal counsel, filed the complaint, is that correct?

9 THE WITNESS: That's correct.

10 ALJ DION: So there are instances where Staff
11 can, on its own accord, file complaints to be heard before
12 the Commission, correct?

13 THE WITNESS: That's correct.

14 ALJ DION: Mr. Wetherald, any other questions?

15 MR. WETHERALD: Not on that line.

16 BY MR. WETHERALD:

17 Q. Mr. Bostwick, in your discussions with Staff
18 and going all the way back to February where the order was
19 given by Judge Dion to send out notices, did anybody on
20 the Staff review the SGAT to determine what rights or
21 remedies would be available to either party in the dispute
22 between us and Qwest?

23 A. I am not aware of one way or the other.

24 Q. Did anybody on the Staff prior to the
25 February 24th meeting review anything in the rules or

1 statutes of this Commission to determine what their
2 authority may or may not be in relation to those issues?

3 A. I am -- I can't say specifically.

4 Q. Did you?

5 A. The only thing I reviewed was the letter to
6 disconnect customers.

7 Q. And that --

8 A. That I am aware of.

9 ALJ DION: Which -- I have to do this -- which
10 letter was that, Mr. Bostwick?

11 THE WITNESS: It was the letter that Staff,
12 well, initially it was a, it was an order for the company
13 to inform its customers that they will no longer provide
14 service. When that didn't take effect, then Staff was
15 ordered to do it.

16 ALJ DION: Okay. And ultimately Staff drafted
17 a notice and you reviewed that, is that correct?

18 THE WITNESS: That's correct.

19 ALJ DION: That was not the notice that was
20 sent out however, but that's what you reviewed, is that
21 correct?

22 THE WITNESS: That's correct.

23 ALJ DION: Okay. Thank you.

24 BY MR. WETHERALD:

25 Q. But, Mr. Bostwick, the need to send the notice

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1 and even, frankly, much of the issues surrounding the
2 financial viability of PCMG at the time, centers around
3 whether or not PCMG owes Qwest money, correct?

4 A. I can't say that because I haven't seen any
5 financial statements.

6 Q. Mr. Bostwick, we both consented that Qwest
7 said we owed them money and we disputed them?

8 A. Qwest says you owe money. You admit you owe
9 them money.

10 Q. Well, it is not so clean an admission, but for
11 the sake of argument, Mr. Bostwick, the reality is, is
12 that that issue was not yours or the Staff's to decide,
13 was it?

14 A. What issue? I am lost here.

15 Q. The issue whether or not we owed Qwest money,
16 whether or not the disputes were legitimate or not
17 legitimate.

18 A. Well, we asked the information of Qwest. We
19 asked the information of you. You both came back with
20 different responses. They didn't match dollar for dollar.

21 Q. Was it your responsibility to determine who
22 was right and who was wrong and to make a determination?

23 A. I don't think I made that determination. I
24 didn't audit the books.

25 Q. I don't think you did.

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1 A. Right.

2 Q. But wouldn't it also be fair to say that,
3 until such a determination was or had been made, that
4 neither you nor anybody on this Staff, even Qwest for that
5 matter or even me sitting here today, can assert with any
6 certainty that either I owed Qwest money or either I
7 didn't or whether there was something in between; I owed
8 them less than I thought I did or I owed them more than I
9 thought I did? Nobody here can say that with certainty,
10 can they?

11 A. All I can tell you is what was reported by you
12 and what was reported by Qwest.

13 Q. But at the end of the day, all you can say is
14 that there was a dispute between two parties and nobody
15 knows what the outcome of the dispute would have been?

16 A. That's what I can say.

17 Q. Okay. Anything else on that issue I think
18 will have to be taken up on briefs because I think it is
19 more of a legal issue.

20 Mr. Bostwick, for the sake of trying to cut
21 this as short as possible, on Count Four you deal with a
22 few issues and then I think it is Mr. Morton -- does that
23 name, yes, Mr. Morton -- deals more specifically with the
24 technical and feasible viability, is that correct?

25 A. I don't know what Mr. Morton, I don't know the

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1 full scope. I can't address that.

2 Q. You made the assertion, Mr. Bostwick, that you
3 were getting a lot of complaints from customers. How many
4 complaints were you getting?

5 A. Mr. Morton will have to answer that one.

6 Q. Do you know, Mr. Bostwick, actually I think we
7 may have covered this but you can refresh my memory, if
8 those complaints really started escalating at a certain
9 point in time or whether they were constant at the
10 beginning of April when we started operation all the way
11 through?

12 A. I don't have the exact time that those
13 complaints started coming in.

14 Q. Do you know, Mr. Bostwick, whether or not --
15 well, let me ask you this: Do you know whether PCMG is a
16 facilities-based provider or leased?

17 A. There seems to be a question on that. My
18 total recollection, Qwest says they provide you with
19 resold services.

20 Q. Do you know if PCMG has any equipment that
21 they provided service with?

22 A. I don't know the specifics, no.

23 Q. Do you have any information that would lead
24 you to believe that PCMG does own the equipment that they
25 provide services with?

1 A. I don't have details on that.

2 Q. Now, your complaint, once again you use the
3 same statutes, 40-361 and 40-321, for the basis for
4 bringing the action, is that correct?

5 A. I have to see it.

6 Q. Why don't we turn to the complaint, to page --
7 are we on Count Three?

8 ALJ DION: I think you want page --

9 MR. WETHERALD: Page 10.

10 ALJ DION: -- page 10 of the amended
11 complaint, Mr. Bostwick. Focus on number 42 and 43, again
12 the same statutes that we reviewed, one being the statute
13 dealing with essentially requirements of a public service
14 corporation, and, 40, dealing with the remedy so to speak,
15 although no remedy is stated in it.

16 THE WITNESS: Page 10 you say?

17 ALJ DION: Yes, page 10. And page 11 is the
18 enforcement section of the statute which also implies a
19 remedy portion as well.

20 BY MR. WETHERALD:

21 Q. And then actually I am talking about technical
22 feasibility, so also Count Four on page 11, paragraph 50
23 and paragraph 51.

24 A. Page what now?

25 Q. 11.

1 A. 11 and what?

2 Q. Paragraph 50.

3 ALJ DION: And I will just take judicial
4 notice, same exact statutes, just been repeated.

5 Mr. Bostwick, again, they are statutes dealing
6 with the public service corporation and the standards
7 essentially it must maintain, what the Commission can do
8 if the standards are violated.

9 BY MR. WETHERALD:

10 Q. Mr. Bostwick, is a reseller or any other
11 telecommunications company responsible for the
12 maintenance, repair, equipment, facilities that they don't
13 own or control?

14 A. I don't believe they would be.

15 Q. So if PCMG relied entirely upon Qwest to
16 provide services and their equipment and facilities, would
17 PCMG have any obligation to make sure that they were
18 working?

19 A. I think they have a moral obligation, yes.

20 Q. Boy, I am --

21 A. Let me change that. I will strike the word
22 moral. I think they have an obligation to inform their
23 provider that the equipment isn't working.

24 Q. Okay. Fair enough.

25 But since you really don't know when the

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1 complaints or how many complaints were filed, I don't know
2 that we are going to be able to do this, but is it fair to
3 say that this whole issue of whether or not we were
4 technically capable may ultimately have more to do with
5 Count Three and our financial ability rather than our
6 actual technical ability?

7 A. That's possible. I can't say with a degree of
8 certainty.

9 Q. I mean, it is possible that, because of our
10 financial issues with Qwest in fact, if they stopped
11 processing orders, that we weren't able to effectuate
12 changes to customer accounts or do hookups and services
13 because we had no ability to do so, is that possible?

14 A. That's possible.

15 Q. And it would have nothing to do with your
16 technical capability, just the fact that Qwest shut us off
17 because we didn't pay them; wouldn't that be a fair
18 statement?

19 A. If you didn't pay it is hard to get service.

20 Q. I will give you that one.

21 Let's deal with one more issue. Turn with me
22 to page 29 of your testimony. And starting at line 15,
23 could you review what you read and wrote, or question and
24 answer if you will? You don't have to read it, just
25 review it and we will go from there.

1 A. Okay. All right.

2 Q. You write in here basically that there is a
3 disparity between the number of active customers that we
4 say we have and the number of active customers that Qwest
5 says we have?

6 A. Correct.

7 Q. And you conclude that it would appear that we
8 lack the resources and technical ability to keep track of
9 its current customers in Arizona. Do you see that?

10 A. I wrote that, correct.

11 Q. Could it be that it wasn't our lack of ability
12 to track these customers but Qwest was billing us for
13 customers that weren't ours?

14 A. I don't really know if that could be. All I
15 am basing my response, this information is based on the
16 response I received from LiveWireNet and the response I
17 received from Qwest.

18 Q. Did you ever look at any other materials we
19 submitted related or disputed with Qwest?

20 A. I haven't seen anything regarding the customer
21 list from the company.

22 Q. But you did see documentation regarding the
23 reasons for some of our underlying disputes with them, did
24 you not?

25 A. I don't recall it.

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1 Q. Okay. Would it surprise you to find out that
2 one of the assertions of PCMG was just that, that Qwest
3 was billing us for customers that weren't ours?

4 A. I am not aware of it. I mean --

5 Q. But that could explain why there is a
6 disparity between these numbers, could it not?

7 A. Plus the fact that, when we asked you about
8 getting a customer list, we never received it.

9 Q. But once again we go back to the fact that
10 because I may not have produced the information doesn't
11 mean the information either didn't exist or wasn't there,
12 correct?

13 A. Well, the fact that you didn't produce it
14 means either you don't have or you didn't want to share
15 it.

16 Q. Did we eventually produce the information?

17 A. I have never seen it.

18 Q. Okay. Could you explain, you know, in, I
19 don't know that this is proper or not, but when you wrote
20 the last notice to Judge Dion as to what I complied with
21 in terms of discovery requests, I don't recall seeing that
22 you said I didn't produce a customer list or that
23 information. So are you saying that I didn't produce it?

24 A. I haven't seen it.

25 Q. But because you haven't seen it doesn't mean

1 it wasn't produced? Somebody else could have it?

2 A. I am not aware of it.

3 Q. I am just curious, because whether it is late
4 or not, I was trying to get you what you had asked for,
5 and I don't remember seeing this item on that list.

6 A. Okay.

7 Q. Okay? So...

8 The rest of this I guess I will deal with
9 Mr. Morton on. Violation of Commission rules, Count
10 Number Five. I don't even know where to start with this
11 one.

12 You pretty much have testified prior that you
13 have no legal training, no legal background so to speak,
14 you are not an attorney. So you really cannot speak to
15 the legal issues surrounding claim five, can you?

16 ALJ DION: I am going to interject.

17 Mr. Bostwick, did your testimony include
18 anything about Count Five?

19 THE WITNESS: No, I have nothing on Count Five
20 at all.

21 MR. WETHERALD: Oh.

22 ALJ DION: And that's --

23 MR. WETHERALD: Maybe I misread it.

24 ALJ DION: That's my recollection of the
25 reading of the testimony as well. Therefore,

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1 Mr. Wetherald, I believe this is outside the course of
2 cross-examination.

3 MR. WETHERALD: You are right, Your Honor.

4 ALJ DION: I believe another Staff will
5 present Count Five.

6 MR. WETHERALD: You are right. You are
7 absolutely right. Nothing else I can say.

8 ALJ DION: Do you have any other questions for
9 Mr. Bostwick, sir?

10 MR. WETHERALD: Not at this time.

11 ALJ DION: Okay. Thank you.

12 Mr. Tricamo, do you have questions for
13 Mr. Bostwick, sir?

14 MR. TRICAMO: No, I don't.

15 ALJ DION: Mr. Johnson?

16 MR. JOHNSON: Yes, I do. And I will move the
17 mike closer.

18 ALJ DION: Before you start, Mr. Johnson, is
19 this something that would be finished up in the next 40
20 minutes?

21 MR. JOHNSON: I will try, Your Honor. But it
22 obviously depends on Mr. Bostwick's responses to my
23 questions.

24 ALJ DION: Fair enough. Go ahead.
25

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q. Mr. Bostwick, I am going to start with what I
4 hope is a very easy question. And that is: Does my name
5 include the words The Phone Company?

6 A. I am sorry?

7 Q. Does my name, David Stafford Johnson, include
8 The Phone Company?

9 I didn't realize that would be so difficult to
10 answer?

11 A. Well, I don't see it.

12 Q. Good. That's a good start.

13 ALJ DION: Okay, Mr. Johnson. I am sorry. I
14 am going to hold you to a little bit higher standard.

15 MR. JOHNSON: I understand that, Your Honor.

16 ALJ DION: So commenting on answers, yes, no,
17 good, things like that --

18 MR. JOHNSON: I understand.

19 ALJ DION: -- I am just letting you know I am
20 going to hold you to a slightly higher standard.

21 MR. JOHNSON: I understand.

22 ALJ DION: Let's move on.

23 BY MR. JOHNSON:

24 Q. Mr. Bostwick, you have conducted a --

25 A. I am sorry. Can you speak up?

1 Q. I am sorry. You are not hearing me. I
2 apologize.

3 It is my understanding that you have conducted
4 a very extensive review of the matters that are before
5 this Commission, I guess beginning in early 2003. Or when
6 did your actual review start? When were you asked to look
7 into the matters before this Commission?

8 A. Well, I think it started somewhere around
9 July. But it is, it also falls back on the advertising
10 that I saw in the early part of, I think it was, May.

11 Q. Of 2002, correct?

12 A. Of 2002.

13 Q. And your review has been ongoing since that
14 time until now?

15 A. It is ongoing, yes.

16 Q. Did you ever contact me to inquire as to any
17 matter that is before this Commission?

18 A. I have never contacted you in any way, shape,
19 or form.

20 Q. In fact haven't you already testified that you
21 really didn't contact anybody, basically just reviewed and
22 looked at materials that have been submitted to this
23 Commission and the various filings that have led to this
24 filing?

25 A. When you say contact somebody, I contacted

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1 some people but not the people that, or the material that
2 Mr. Wetherald or yourself have identified or whatever.

3 Q. Did you ever send me any data requests?

4 A. I am sorry?

5 Q. Did you ever send me any requests for data or
6 information in writing?

7 A. No, I did not.

8 Q. Are you aware of any data requests that have
9 been sent to me by Staff, anyone else on the Staff?

10 A. By name, no.

11 Q. Mr. Bostwick, in addressing Count One of the
12 complaint, you state that on February 16th, this is in the
13 year 2001, that a Decision 63382, LiveWireNet of Arizona
14 was issued a certificate of convenience and necessity and
15 that, according to Mr. Jim Hinsdale of LiveWireNet of
16 Arizona, LLC, that corporation was transferred to On
17 Systems on January 10th, 2002.

18 Is that a correct account of what you
19 testified to in your direct testimony?

20 A. I believe that's correct.

21 Q. Did you ever speak with Mr. Hinsdale
22 concerning the structure of that transaction?

23 A. No, I did not.

24 MR. JOHNSON: Your Honor, I have an agreement
25 of purchase and sale of membership interest that I have

1 yet to mark, if I may.

2 ALJ DION: Okay. Why don't we do that. Why
3 don't we call that J-1 then.

4 MR. JOHNSON: J-1 is fine.

5 By the way, all these have already been
6 submitted in one form or fashion to the Commission. This
7 is trying to expedite so we don't have to look through
8 boxes.

9 ALJ DION: I can do this even faster.

10 Mr. Horton, do you have any objection to J-1?

11 MR. HORTON: No, we do not, Your Honor. Thank
12 you.

13 ALJ DION: Mr. Crockett?

14 While Mr. Crockett reviews that with his
15 client, there have been no foundation, foundation has not
16 been laid on this document. However, I am just going to
17 ask, for brevity, to see if we can just admit this.
18 Mr. Wetherald, do you have any objection?

19 MR. WETHERALD: No, I do not.

20 ALJ DION: Mr. Tricamo?

21 MR. TRICAMO: No objection.

22 ALJ DION: Mr. Crockett, do you have an
23 objection to the agreement of purchase and sale of
24 membership interest that appears to be signed by Mr. James
25 Hinsdale? And the second signature is a little bit more

1 difficult. I am sure Mr. Johnson will tell us a little
2 bit about that.

3 MR. CROCKETT: Your Honor, I don't believe I
4 have an objection, although I haven't seen this document
5 before and have not had an opportunity to read it.

6 ALJ DION: I will certainly allow the parties
7 to do that. I had wanted witnesses and exhibit lists
8 exchanged so that I would avoid this.

9 But for now I will conditionally admit J-1
10 based on the statements from counsel and the parties that
11 they have no objection. However, I will also give counsel
12 and parties until the next time we meet, which will
13 probably be Wednesday, to review that. And if there are
14 objections, we can deal with it at that time.

15 Mr. Johnson, your witness, sir.

16 MR. JOHNSON: Thank you, Your Honor.

17 BY MR. JOHNSON:

18 Q. Mr. Bostwick, would you read for me paragraph
19 two on the recital? It is on page 1, begins with the
20 words "Whereas buyer desires."

21 A. Whereas buyer desires to purchase from the
22 selling party and selling party desires to sell to buyer
23 100 percent of the membership interest of LiveWireNet of
24 Arizona, LLC, an Arizona limited liability company, and
25 LiveWireNet of Washington, LLC, a Washington limited

1 liability company, collectively the membership interests,
2 and --

3 Q. If you will look on the last page,
4 Mr. Bostwick, of this agreement you will note there are
5 two signatures. And I realize you may not be familiar
6 with all the signatures. But clearly in the Live Wire
7 Networks, Inc.'s column it appears that there is a
8 signature by James Hinsdale, and on the On Systems
9 Technology, LLC signature line there is an unreadable
10 signature but I submit is a signature of Mr. Wetherald.
11 And he is here to confirm or deny whether or not that is
12 his signature.

13 But if you would, if you read that, actually
14 that paragraph that I just handed to you, would that lead
15 you to believe that at least as of the date of the
16 agreement, January 10th, 2002, that 100 percent of the
17 interest, membership interest of LiveWireNet of Arizona,
18 LLC, were going to be transferred to On Systems
19 Technology?

20 A. Yes.

21 MR. JOHNSON: Your Honor, this is an affidavit
22 from Jim Hinsdale that has also been submitted previously
23 in this hearing as a previous motion. He is not here
24 today. And I just want to enter this into evidence as
25 well to show the -- his confirmation of that transaction.

1 ALJ DION: Is there an objection from Staff?

2 MR. HORTON: We need to see the exhibit first,
3 make sure.

4 ALJ DION: That's a very good point. I will
5 mark this as J-2. And I guess I was referring to the
6 overall objection of an affidavit without an ability to
7 cross-examine, if you had an objection to that principle,
8 and then specifically J-2.

9 MR. HORTON: Your Honor, Staff would object in
10 that the affidavit appears to state more than just facts
11 concerning the agreement of purchase and sale of the
12 membership interest.

13 ALJ DION: Okay. I am looking at 1, the
14 paragraph listed as 1. I am also looking at number 2 as
15 far as his position.

16 MR. HORTON: Yes.

17 ALJ DION: 3 does seem to go beyond that, so I
18 am not going to consider 3 unless Mr. Hinsdale was to come
19 in and testify.

20 And there is the first sentence however on
21 number 4, on or about July 10th, 2000, Live Wire Networks,
22 Inc. sold to. Do you have any objection to that sentence
23 in number 4? And then again I would consider 1, 2 and the
24 first sentence of 4 only.

25 MR. HORTON: We have no objection based on

1 that, Your Honor.

2 ALJ DION: Okay. Then exhibit J-2 at this
3 point I will consider for evidentiary purposes paragraph 1
4 and 2 entirely. I will not consider 3 nor 5. And I will
5 only consider the first sentence of number 4, Mr. Johnson.

6 MR. JOHNSON: 4, nothing in 3, Your Honor?

7 ALJ DION: No. There is an indication, that's
8 closer -- the first two tell me who Mr. Hinsdale is and
9 how he might have an indication as to what is going on.

10 And the other one kind of tells me about
11 essentially what happened, who were co-managers. It is
12 starting to get a little bit far afield for the purposes
13 you submitted it or stated.

14 Additionally, I think J-1 speaks for itself,
15 and it is a purchasing sale agreement between the two
16 companies. So the two might be superfluous and gives me a
17 little more information about Hinsdale and his affiliation
18 with Live Wire Networks and LiveWireNet of Arizona.

19 MR. JOHNSON: Thank you, Your Honor. That's
20 fine at this point.

21 BY MR. JOHNSON:

22 Q. Mr. Bostwick, do you have any information that
23 would indicate when -- I believe you have testified to
24 this, that The Phone Company Management Group did not
25 commence services or providing services to customers in

1 the state of Arizona until April of 2002. I believe you
2 testified to that before.

3 A. That's my understanding, yes.

4 Q. So, in other words, in the context of this
5 particular transaction I am speaking of, this sale
6 occurred prior to the commencement of services by PCMG in
7 the state of Arizona?

8 A. Yes, based on the agreement of purchase.

9 Q. Purchase and sale?

10 A. Yes.

11 Q. That is the transaction I am referring to.

12 Your Honor, I have one more exhibit I would
13 like to label J-3. It is my resignation as manager of The
14 Phone Company Management Group, LLC.

15 ALJ DION: Unless there will be a stipulation,
16 you may have to testify about this one, Mr. Johnson.

17 MR. JOHNSON: That's fine, Your Honor.

18 ALJ DION: Staff, do you have any objection to
19 this, J-3?

20 MR. HORTON: No, Your Honor.

21 ALJ DION: Mr. Crockett, any objection to the
22 one sentence letter that is handed before me?

23 MR. CROCKETT: I don't believe so, Your Honor,
24 but we ask for the same indulgence you gave in J-1.

25 ALJ DION: Understood.

1 Mr. Wetherald, any objection, sir?

2 MR. WETHERALD: No.

3 ALJ DION: Mr. Tricamo?

4 MR. TRICAMO: No objection.

5 ALJ DION: Okay. Then hearing no objection,
6 J-3 will be admitted, again giving the parties time to
7 review it until the next time we get together, which I
8 believe will be Wednesday, to voice any objection.

9 Your witness, Mr. Johnson.

10 MR. JOHNSON: Mr. Bostwick, the exhibit I have
11 handed you which is labeled J-3 is dated February 1st,
12 2002, is that correct?

13 A. That's correct.

14 Q. And based on what it says, would you confirm
15 that that is a letter that, and a subject I might be
16 cross-examined by Staff in the matter, that is a letter
17 that indicated I resigned as a manager of Phone Company
18 Management Group to become effective immediately?

19 A. Yes.

20 Q. Mr. Bostwick, on pages 6 and 7 of your direct
21 testimony you testified the following: The name change of
22 LiveWireNet of Arizona, LLC to The Phone Company
23 Management Group, LLC, that The Phone Company Management
24 Group was an affiliate of On Systems and was owned and
25 operated by one Tim Wetherald. Is that a correct account

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1 of your testimony?

2 A. Where are you at? I am sorry.

3 Q. Page 6 and 7 of your direct testimony. I
4 believe it starts on the bottom. In fact it starts on the
5 last line.

6 A. Right.

7 Q. So is that an accurate account of your
8 testimony?

9 A. Right.

10 Q. So it is your belief and testimony that On
11 Systems owned The Phone Company Management Group, is that
12 correct, or at least an affiliate?

13 A. Let me just read it, refresh my memory.

14 Q. Sure.

15 A. Yes.

16 Q. During your investigation, Mr. Bostwick, did
17 you ever discover any information which would lead you to
18 believe that I had any membership interest or managerial
19 role in The Phone Company Management Group?

20 A. Yes. The way it is worded, because you
21 already said you were part of it back here.

22 Q. After February 1st, 2002, Mr. Bostwick --

23 A. Right.

24 Q. -- do you have any information which would
25 lead you to believe that I had a membership interest?

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1 A. Oh, I am sorry. Membership interest. No, I
2 don't know.

3 Q. How about before February 1st of 2002?

4 A. You may have. I don't have it one way or
5 another.

6 Q. So you don't have any information that I was
7 ever a member of that company?

8 A. I think I said that.

9 Q. Prior, post February 1st, 2002, do you have
10 any information that would indicate that I had any
11 managerial role with The Phone Company Management Group,
12 LLC?

13 A. Prior to what date?

14 Q. Post February 1st.

15 A. No, I do not.

16 Q. You do not.

17 Did you ever discover any information,
18 Mr. Bostwick, that would lead you to believe that I had
19 any advisory role at any time with The Phone Company
20 Management Group?

21 A. No.

22 Q. Mr. Bostwick, I understand that there is an
23 attachment to an application for discontinuance which was
24 filed July 31st, 2002 that states that I am a member or I
25 was a member of The Phone Company Management Group. Is

1 that your understanding, Mr. Bostwick?

2 A. Yes.

3 Q. This document was dated July 31st, 2002. So
4 you had this information, I understand, prior to filing
5 your direct testimony in March of that same year, I am
6 sorry, in March of 2003?

7 A. That's correct.

8 Q. So you knew that there was an exhibit that
9 included, or listed me anyway, as a member of The Phone
10 Company Management Group.

11 How did you conclude then, sir, that I was not
12 a member of the Phone Company Group and didn't have a
13 managerial role?

14 A. I believe it was because of your name
15 appearing on the application.

16 Q. But you just testified that you had no
17 information that I was a member or manager of Phone
18 Company Management Group after February 2nd of 2002.

19 A. But the application was still under review.

20 Q. Were you confused by that, Mr. Bostwick?

21 A. When your name appears on there, it is, it is
22 hard to determine if you are still active or inactive.
23 And when we have an application going, it is ongoing
24 review, everything came to a halt at that time until
25 further examination of other documents surfaced.

1 Q. Mr. Bostwick, did you ever contact me to ask
2 me the question?

3 A. I did not.

4 Q. Based on the application itself, Mr. Bostwick,
5 isn't there a statement in paragraph 2 that LiveWireNet is
6 a wholly-owned subsidiary of Live Wire Networks and it has
7 agreed to sell to On Systems and On Systems agreed to
8 purchase all of the interests?

9 A. I don't have that before me.

10 MR. JOHNSON: Your Honor, I don't have
11 multiple copies of the actual application. It is
12 something that has been filed with the Commission. I am
13 happy to --

14 ALJ DION: What Docket No.?

15 MR. JOHNSON: It is the actual application
16 itself to discontinue local exchange service.

17 MR. HORTON: I believe it is 02-577, sir.

18 ALJ DION: Is that correct, is the last six
19 digits 02-577?

20 MR. JOHNSON: I have a stamped and received.
21 I don't have a Docket No., no Docket No. on this
22 particular copy. It is just a stamped copy that has been
23 received by the Commission.

24 ALJ DION: Can you give me the date again?

25 MR. JOHNSON: It was received July 31st, 2002.

1 ALJ DION: Is it submitted by Tad Miller,
2 paralegal, is that correct?

3 MR. JOHNSON: Yes, Your Honor.

4 ALJ DION: And where are we looking again?

5 MR. JOHNSON: First page, paragraph 2.

6 ALJ DION: First page I have is a, first page
7 is a cover letter from Tad Miller, first page of the
8 application.

9 MR. JOHNSON: I am sorry, Your Honor, first
10 page of the application.

11 ALJ DION: I have an A-2 which is about the
12 name and address. Is there an exhibit you are referring
13 to? Because the first section is actually just the
14 standard printable version of -- it is just a form.

15 MR. JOHNSON: Your Honor, I have an actual
16 document signed by Mr. Wetherald, which is an application
17 to discontinue local exchange service to which I believe
18 the exhibit or the application you are referring to is
19 attached.

20 ALJ DION: That makes more sense, then. You
21 are not going to admit this?

22 MR. JOHNSON: No.

23 ALJ DION: Hold on one minute. I think I have
24 it. It is docket T-03889A-02-0578. And I am looking at
25 the first page which is titled Application to Discontinue

1 Local Exchange Service. It is in the matter of the
2 application of LiveWire of Arizona, LLC to discontinue
3 facilities-based and resold-based local exchange service.
4 Paragraph two says LiveWireNet is a wholly-owned
5 subsidiary of Live Wire Network, Inc., a Nevada
6 corporation.

7 It goes on to say: Live Wire Networks,
8 Incorporated has agreed to sell to On Systems and On
9 Systems Technology has agreed -- On Systems, LLC and On
10 Systems Technology, LLC has agreed to purchase all of the
11 membership interests held by Live Wire and LiveWireNet
12 subject to regulatory approval.

13 Is that the one?

14 MR. JOHNSON: Yes. And that's the relevant
15 language, Your Honor.

16 ALJ DION: Okay. Mr. Bostwick, do you need to
17 look at that?

18 THE WITNESS: Yes, I would prefer if he is
19 asking me questions.

20 ALJ DION: Why don't you.

21 I will note for the record it is one of the
22 many files consolidated in this case. And I will use the
23 file records to review anything of substance, if
24 necessary.

25 Mr. Johnson, go ahead.

1 MR. JOHNSON: Thank you, Your Honor.

2 BY MR. JOHNSON:

3 Q. So based on that language in I guess the
4 application itself to which that exhibit was attached,
5 Mr. Bostwick, wouldn't there appear to you to be some
6 confusion between whether or not I was a member of PCMG at
7 the time of that application of July 31st, at least on
8 record to what has been filed?

9 A. I don't see your name in any connection with
10 LiveWireNet on this document.

11 Q. Okay. On page 12 in your direct testimony,
12 Mr. Bostwick, you state on line 8, do you not, that On
13 Systems Technology owns all the membership interest in
14 PCMG?

15 A. I am sorry.

16 Q. It is on page --

17 A. I have got --

18 Q. -- page 12, line 8.

19 A. Okay. On page 8. What line?

20 Q. Page 12, I am sorry, line 8.

21 A. Oh, I am sorry. Line again, please?

22 Q. Line 8.

23 A. Line 8. Okay.

24 Q. You state, don't you, that On Systems, LLC
25 owned all the membership interest in PCMG in your direct

1 testimony?

2 A. Correct.

3 Q. Do you also not state in line 11 of that same
4 page that Mr. Wetherald is the principal of On Systems
5 Technology, LLC?

6 A. Right.

7 Q. And you use the word "the," correct, not a
8 principal?

9 A. Is the principal.

10 Q. Is the principal. Thank you.

11 Down at line 20, of that same page,
12 Mr. Bostwick, you say: Thus, management responsibility
13 for the multi-state, multi-company operations of the
14 companies listed above is apparently all managed by one
15 man.

16 A. Right.

17 Q. And are you referring to Mr. Wetherald when
18 you refer to "one man"?

19 A. That's correct.

20 Q. Mr. Bostwick, I stand before this Commission
21 today being accused of being a member of PCMG and a
22 principal of On Systems. Is there any information that
23 you have discovered during your review that in any manner
24 would support that accusation?

25 A. Just give me a few minutes here.

1 I have nothing at this time.

2 Q. Mr. Bostwick, do you discuss your work with
3 Staff, other members of the Staff?

4 A. Yes, at times.

5 Q. Can you testify -- you testified earlier that,
6 I understand, you actually looked at the amended complaint
7 before it was submitted or filed back in, I believe it
8 was, June of 2000?

9 A. I did review it, yes.

10 Q. Could you look, sir, at paragraph 39 of that
11 complaint, the amended complaint, I am sorry?

12 ALJ DION: Just for the record, that is page
13 10 of the amended complaint.

14 MR. JOHNSON: Yes. I am sorry, Your Honor.
15 That's page 10.

16 THE WITNESS: Yes, item 39.

17 BY MR. JOHNSON:

18 Q. In that item does it not state that The Phone
19 Company Management Group is owned and managed by
20 Mr. Wetherald and On Systems Technology?

21 A. It does.

22 Q. And doesn't that comport, Mr. Bostwick, with
23 your perspective and your view of this, of the ownership
24 structure at that point in time?

25 A. Yes.

1 Q. And you had, did you not, before you all the
2 filings, including the July 31st application I referred to
3 earlier, in your hands when you made that conclusion?

4 A. With the exception of the purchase agreement,
5 I don't believe I had that.

6 Q. Fair enough. Fair enough.

7 Do you have any explanation, Mr. Bostwick, for
8 why as late as last week Mr. Horton was still arguing that
9 I was a member of PCMG?

10 A. I have some indication of that. I don't have
11 specifics in my hands of what he was referring to. The
12 names listed on the application --

13 Q. But that's an application, wasn't it,
14 Mr. Bostwick? You had available to you when you submitted
15 your direct testimony in March of 2003?

16 A. That's correct.

17 Q. And you had made the previous conclusion that
18 I wasn't a member and you had that information before you,
19 isn't that correct?

20 A. I don't really recall.

21 Q. Well, Mr. Bostwick, you just testified that,
22 if a filing of an application was made in July 2002 that
23 you had available to you to make a judgment in March of
24 2003, you made a judgment, you obviously -- you testified
25 that you communicated with Staff, the amended complaint

1 was filed, the amended complaint comported with your
2 perspective in June that I was not a member. The amended
3 complaint specifically said On Systems owns PCMG. So what
4 confusion do you have in your mind today that I was or was
5 not a member of PCMG?

6 A. I have no confusion on that.

7 Q. And your testimony is that I was not a member
8 of PCMG?

9 A. That's correct.

10 Q. Thank you. And you have no explanation today,
11 Mr. Bostwick, do you, why Mr. Horton is still arguing that
12 I am a member of PCMG; is that your testimony?

13 A. I don't have.

14 Q. Mr. Bostwick, Staff implies in its amended
15 complaint that Tim Wetherald and On Systems and its
16 principals conducted the affairs of PCMG and The Phone
17 Company of Arizona under the alter ego theory, does it
18 not?

19 A. I can't comment on the alter ego theory.

20 Q. So, therefore, the principals of PCMG or -- I
21 am sorry. You have no opinion on the principals, who the
22 principals of PCMG or the principals of On Systems are, is
23 that correct?

24 A. That's correct. The alter ego theory that you
25 seek to would be addressed by another Staff member.

1 Q. Mr. Bostwick, do you have any information that
2 would indicate that I was a member of On Systems?

3 A. I don't have it one way or the other, that you
4 are or are not or were or were not.

5 Q. Mr. Bostwick, on page 20 of your direct
6 testimony, you indicate that on August 11th, 2002, the
7 Commission approved an interconnection agreement between
8 PCMG and Qwest, is that correct, sir?

9 A. I am sorry, sir.

10 Q. It was on page 20 of your direct testimony.

11 A. On line 21 and line 22, yes.

12 Q. You are identifying it. I couldn't find it
13 quickly.

14 So on August 11th, 2002, when there was an
15 interconnection agreement signed by PCMG and Qwest, as I
16 understand your previous testimony, there is no evidence
17 that would indicate that I was a member, manager or in any
18 way affiliated with PCMG, is that correct?

19 A. I don't know one way or the other.

20 Q. You just testified to that, haven't you?

21 A. I understand.

22 Q. On August 11th, 2002, you have no information
23 whatsoever that I was a member, manager or in any way
24 affiliated with PCMG?

25 A. I don't.

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1 Q. In your testimony you also state the services
2 in Arizona provided by PCMG did not commence until
3 April 18th of 2002 and ran until March 21st, 2003. I
4 believe you can find that on page 21 of your direct
5 testimony in lines 2 and 3, actually lines 1 through 3.

6 A. Right.

7 Q. Is that correct?

8 A. Yes.

9 Q. You also state -- well, first of all, was that
10 information provided to you by Qwest?

11 A. Yes, I believe it was.

12 Q. And you also state, don't you, that PCMG owes
13 Qwest \$1,505,210?

14 A. I am not subject, I have to -- subject to
15 check on that figure, on the dollar amount.

16 Q. But a significant amount of money?

17 A. That's a significant amount of money.

18 Q. That's significant. I agree with that.

19 Mr. Bostwick, has Qwest provided you any
20 information to indicate that On Systems owes Qwest any
21 money for services provided to the State of Arizona?

22 A. I am not aware of.

23 Q. Any indication that I personally owe Qwest any
24 money for services provided in the state of Arizona?

25 A. I am not aware of that either.

1 Q. I am going to go down, if I could,
2 Mr. Bostwick, to page 13 of your direct testimony. And
3 you list on page 13 several proceedings that Mr. Wetherald
4 referred to in his cross-examination. These include
5 proceedings in the state of Oregon, proceedings before the
6 Iowa Utilities Board, proceedings before the Minnesota
7 Board of Public Utilities, proceedings in the state of
8 Washington and proceedings before the Colorado Public
9 Utilities Commission, correct?

10 A. That's correct.

11 Q. Do you have any information, Mr. Bostwick, to
12 indicate that I was ever involved in any one of those
13 proceedings?

14 A. Nothing specific, no.

15 Q. Nothing specific? Do you have anything that
16 is --

17 A. Nothing.

18 Q. Nothing, thank you.

19 In fact, isn't it true that, based on the
20 attachments that you have included in your direct
21 testimony, that I am not named in any of those actions?

22 A. I believe that's correct.

23 Q. Mr. Bostwick, if I may go through, I know you
24 went through this with Mr. Wetherald, but I would like to
25 go through the counts, if I may. And I will try to keep

1 this brief, knowing we are trying to get out of here at a
2 reasonable hour today.

3 If I can turn to Count One in the amended
4 complaint. Is it true, sir, in Count One that Staff has
5 stated that The Phone Company of Arizona and its owner and
6 managers should be subject to fines for failing to comply
7 with Arizona Revised Statutes and Commission rules and
8 failure to comply with the applicable laws and regulations
9 to provide telephone service in the state of Arizona?

10 A. I don't know where you are reading, sir.

11 Q. I am just looking at Count One in the
12 complaint, I believe, on paragraph 31. Why don't you look
13 at paragraph 31 on page 9, first sentence.

14 If Your Honor doesn't mind, I will just read
15 it.

16 Respondent Phone Company of Arizona and its
17 owners should be subject to fines for failing to comply
18 with Arizona revise -- or Arizona statutes and Commission
19 rules requiring that all public service corporations
20 acquire a CC&N, and comply with all applicable laws,
21 rules, regulations, to provide telephone service to
22 customers in Arizona.

23 Does it state that, paragraph 31?

24 A. Yes.

25 Q. Is my name mentioned anywhere in there, sir?

1 A. I don't see it.

2 Q. Did your investigation -- I am sorry.

3 Based on your investigation, Mr. Bostwick, and
4 in your opinion, would this count apply to me?

5 A. I am sorry, sir. Can you repeat that?

6 Q. Based on your investigation, in your opinion
7 would this count apply to me in any manner whatsoever?

8 A. I don't see it.

9 Q. Let's go to Count Two. In Count Two, let's
10 look at page 40 -- I am sorry -- paragraph 40 in Count
11 Two.

12 And if Your Honor doesn't mind, I will read
13 that as well. Further, as set forth in Counts Three, Four
14 and Five following, The Phone Company Management Group
15 and/or The Phone Company of Arizona are not financially or
16 technically capable of providing telecommunication.
17 Accordingly, The Phone Company Management Group's CC&N
18 should be revoked since it is no longer a fit and proper
19 entity to provide service in Arizona.

20 Does this count name me, Mr. Bostwick?

21 A. It does not.

22 Q. Based on your investigation and in your
23 opinion does this count apply to me in any manner
24 whatsoever?

25 A. No, it does not.

1 Q. Let's go to Count Three. In paragraph 44,
2 once again, the respondents Phone Company Management Group
3 and/or The Phone Company of Arizona are not financially
4 capable of providing service in Arizona.

5 In paragraph 48 of that same page, it says:
6 Respondent Phone Company Management Group's CC&N should be
7 revoked due to its financial inability to provide
8 telephone service in Arizona.

9 Does it, does that count name me?

10 A. No, it does not.

11 Q. And based on your investigation, in any
12 respect whatsoever does that count apply to me?

13 A. No, it does not.

14 Q. Count Four, I will look at paragraph 52:
15 Respondents Phone Company Management Group and/or The
16 Phone Company of Arizona do not have the technical
17 capability to provide telephone service in Arizona.

18 And then paragraph 55 of the amended complaint
19 requests that The Phone Company Management Group CC&N be
20 revoked due to technical inability to provide reasonable
21 and adequate telephone service in Arizona.

22 Does that count name me?

23 A. No, it does not.

24 Q. In any manner based our investigation does
25 that count apply to me, sir?

1 A. No.

2 Q. If I may go to Count Five. In paragraph 57,
3 sir, it is stated that, and I will read it again: The
4 Phone Company Management Group, The Phone Company of
5 Arizona, On Systems Technology and Mr. Wetherald have,
6 since this proceeding commenced, acted in contempt and
7 willful violation of several Commission orders.

8 Is my name mentioned there, sir?

9 Paragraph 57.

10 A. You are not mentioned. But I can't comment on
11 Count Five, I have no direct on that.

12 Q. In paragraph 61, sir -- I know you didn't have
13 any direct, I am just asking you to read and review with
14 me various paragraphs. In paragraph 61 of that same
15 count, The Phone Company of Arizona, Phone Company
16 Management Group, On Systems and Mr. Wetherald have
17 repeatedly acted in willful violation of Commission orders
18 and should be subject to fines.

19 Does that name me, sir?

20 A. It does not.

21 ALJ DION: Mr. Johnson, do you mind if I
22 clarify something on the record?

23 Mr. Bostwick, if you go back to page 9, in
24 Count Two we talked about 40, which I think addressed
25 Three and Four and Five but didn't address Two. I think I

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1 am going to find the relevant -- I think I am going to
2 find the subject relevant paragraph, subject to his check,
3 to be number 35, in which it gives information about the
4 Phone Company of Arizona, Phone Company Management Group
5 and/or On Systems and Tim Wetherald not being fit and
6 proper entities to provide telephone service, and then
7 goes on to state specifically Mr. Wetherald and/or
8 companies owned and managed by him have been the subject
9 and goes on about the managerial aspect.

10 Similarly, Mr. Johnson's name doesn't appear
11 in that paragraph, is that correct?

12 THE WITNESS: That's correct.

13 ALJ DION: Okay. But also similarly, that if
14 you go to number 31, which is where we started this, there
15 was a second sentence that says respondents Tim Wetherald
16 and On Systems Technology and its principals conducted the
17 affairs of PCMG and Phone Company of Arizona as their
18 alter ego.

19 So you, as I understand it, are not presenting
20 evidence on the alter ego theory, is that correct?

21 THE WITNESS: That's correct.

22 ALJ DION: Someone else from the Staff will be
23 presenting that to me, is that correct?

24 THE WITNESS: That's correct.

25 ALJ DION: So if there is a nexus between

1 Mr. Johnson as a principal of On Systems Technology, it
2 will be presented by that witness, is that correct?

3 THE WITNESS: I believe that's correct.

4 ALJ DION: Okay. Do you have any other
5 questions, Mr. Johnson?

6 MR. JOHNSON: Yes, I do.

7 ALJ DION: About how long, Mr. Johnson?

8 MR. JOHNSON: Your Honor, I think I can get
9 through this in another 10 or 15 minutes and then I will
10 be done with Mr. Bostwick.

11 ALJ DION: Let's shoot for 10.

12 MR. JOHNSON: You are putting the pressure on.
13 I will try, sir.

14 ALJ DION: Okay. You know, Mr. Johnson, I
15 said that, but I don't exactly have the power to do that.
16 Just one second.

17 The court reporter told me another 10 or 15
18 minutes will be okay. Let's go ahead and try and finish
19 this if we can.

20 BY MR. JOHNSON:

21 Q. Mr. Bostwick, in the amended complaint, there
22 are several recommended actions that you can find
23 beginning on page 14, recommendations for relief. Would
24 you review those, sir?

25 A. I am sorry.

1 Q. On page 14, starting with paragraph 62 under
2 relief, there are several recommended actions to be taken.

3 A. Right.

4 Q. Would you review those for me, sir, and tell
5 me when you are finished.

6 A. Sir, I am not looking at it. You said relief?

7 Q. Yes, under the major section relief on page 14
8 beginning with paragraph 62 then.

9 ALJ DION: Do you want me to jump the gun in
10 anticipation, if you -- are you going to ask if your name
11 is present?

12 MR. JOHNSON: I am, sir.

13 ALJ DION: Why don't you, Mr. Bostwick, why
14 don't you review the relief and tell me if you see his
15 name.

16 THE WITNESS: I don't see his name.

17 BY MR. JOHNSON:

18 Q. Mr. Bostwick, I am looking through A
19 through -- actually A through B. Do any one of those
20 items in your opinion based on your investigation apply to
21 me in any manner whatsoever?

22 A. No.

23 Q. In item C, Mr. Bostwick, it states that one of
24 the recommended actions for relief is to impose monetary
25 penalties on The Phone Company Management Group, Phone

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1 Company of Arizona and On Systems Technology and its
2 members as may be appropriate.

3 ALJ DION: What letter was that again?

4 MR. JOHNSON: That was e, sir.

5 ALJ DION: E, thank you.

6 Do you see that, Mr. Bostwick?

7 THE WITNESS: Yes. Letter e, right.

8 BY MR. JOHNSON:

9 Q. And I believe that applies because it refers
10 to members to the alter ego theory or the arguments in
11 Count Five under the amended complaint, very difficult to
12 tie those back together.

13 But in Count Five in paragraph 61, isn't it
14 true that the statement is as follows, The Phone Company
15 of Arizona, The Phone Company Management Group, On Systems
16 and Mr. Wetherald have repeatedly acted in willful
17 violation of Commission orders and should be subject to
18 fines under A.R.S. Sections 40-424 and 40-425?

19 THE WITNESS: Going a little fast.

20 MR. JOHNSON: That's in paragraph 61 on the
21 top of page 14.

22 ALJ DION: Right above the word relief,
23 Mr. Bostwick.

24 THE WITNESS: I am sorry?

25 ALJ DION: Right above the word relief is

1 paragraph 61. So do you agree with Mr. Johnson? He read
2 the paragraph.

3 THE WITNESS: Your name is not there.

4 BY MR. JOHNSON:

5 Q. But also in paragraph 61 it does not refer to
6 members, does it, Mr. Bostwick?

7 A. It refers to -- it does not refer to members.

8 Q. So would it appear, Mr. Bostwick, that
9 paragraph 61 is inconsistent with the relief requested in
10 e which does refer to members?

11 A. I don't know about the inconsistency. It is
12 different.

13 Q. There is a count brought, it does not mention
14 the term members. There is relief sought in section 62 e
15 that does include members. How can there be a count
16 brought that doesn't include an entity or a group of
17 entities and relief sought that does include it? Isn't
18 that an inconsistency?

19 A. It is inconsistent but I didn't prepare it.

20 Q. Mr. Bostwick, I will try to close this out.
21 Based on your direct testimony and the testimony
22 supplemental that you provided today, do you make any
23 recommendations concerning me whatsoever concerning the
24 actions that have been taken by this Commission?

25 A. Nothing specific.

1 Q. Mr. Bostwick, is it your conclusion that I
2 have never failed to comply with an order, rule or
3 requirement of this Commission?

4 A. I don't know what else you have been asked. I
5 know I haven't asked you anything, sent a data request to
6 you personally.

7 Q. So based on your testimony today, it would be
8 your conclusion, would it not --

9 A. It would be mine.

10 Q. -- that I did not violate an order, rule or
11 requirement of this Commission? That would be your
12 conclusion?

13 A. Correct.

14 Q. Just to clarify a couple more things,
15 Mr. Bostwick, is it your conclusion that I have never, or
16 did you determine that I have ever provided
17 telecommunication services in the state of Arizona?

18 A. I am not aware.

19 Q. And how about On Systems, has On Systems ever
20 provided telecommunication services in the state of
21 Arizona?

22 A. On Systems may have.

23 Q. May have?

24 A. May have.

25 Q. And how did you come to that conclusion?

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1 A. It depends on how you interpret the term
2 providing service. Phone Company of Arizona Joint Venture
3 doing business as Phone Company of Arizona may have done
4 business. They may have collected funds. They may have
5 billed customers for telecommunication services.

6 Q. That wasn't my question. I was asking about
7 On Systems directly.

8 A. Well, On Systems owns 30 percent of Phone
9 Company --

10 Q. So --

11 A. -- Arizona Joint Venture.

12 Q. I am sorry. So it is your testimony that the
13 Joint Venture which was comprised of On Systems and the
14 partnership, The Phone Company of Arizona, I can't
15 remember, the partnership, the LLP, possibly provided
16 services?

17 A. Possibly.

18 Q. But not On Systems all by itself uniquely?

19 A. Through its affiliates it may have.

20 Q. Through its affiliates being PCMG?

21 A. Correct.

22 MR. JOHNSON: Your Honor, based on
23 Mr. Bostwick's testimony, as to Counts One through Four, I
24 know this may not be the appropriate time, but it seems
25 that there has been no testimony submitted here whatsoever

1 to support any allegation that I was ever named in those
2 four counts and I would ask those be dismissed as to me.

3 ALJ DION: I understand. Mr. Johnson, I am
4 sure you are familiar that you will have that ability to
5 make that motion once Staff has concluded its case. At
6 this point, based on one witness with more witnesses to
7 go, I am unwilling to entertain that motion. If you would
8 like to reurge that motion, however, at the conclusion of
9 Staff's case, then I will hear it at that time.

10 MR. JOHNSON: Fair enough, Your Honor. At
11 this time I have concluded with Mr. Bostwick.

12 ALJ DION: Thank you. I am going to deny that
13 motion.

14 Let's go off the record for just a second,
15 please.

16 (An off-the-record discussion ensued.)

17 ALJ DION: We are back on the record. We took
18 a brief recess in order to address the scheduling in this
19 case because tomorrow is Tuesday, November 4th, which is
20 an open meeting day. Wednesday is also an open meeting
21 day but we are hopeful that either my attendance will not
22 be required or that the Commission will finish the open
23 meeting on Tuesday and not need this hearing room on
24 Wednesday.

25 Regardless, I have informed the parties to

1 call the Hearing Division (602) 542-4250, in order to
2 determine where and when on Wednesday we will begin the
3 hearing in this case. I have told the parties to be ready
4 by 9:00, as that will be the time I prefer to start.

5 Additionally, I asked the parties regarding
6 the scheduling of witnesses. It appears that it will take
7 the bulk of the morning to finish the cross and redirect
8 of Mr. Bostwick and then move to Staff's other witnesses.
9 And then each of the parties, Mr. Wetherald, Mr. Johnson
10 and Mr. Tricamo and LLP will have one witness, and it
11 indicates this case will probably go through Friday.

12 Mr. Bostwick, you understand that you will
13 still be testifying when it comes to Wednesday?

14 THE WITNESS: Yes, I do.

15 ALJ DION: Okay. And your presence will
16 obviously be required. You are free to talk to your
17 lawyers about this case, but I would caution you about
18 talking about this case to anyone else considering you are
19 still under oath. Is that understood?

20 THE WITNESS: I understand.

21 ALJ DION: Okay. I appreciate that.

22 Mr. Horton, did that summarize our
23 conversation off the record?

24 MR. HORTON: I think you got it all, Your
25 Honor.

1 ALJ DION: And you agree with it?

2 MR. HORTON: Yes, Your Honor.

3 ALJ DION: Mr. Crockett, same two questions,
4 is that the summary and do you agree?

5 MR. CROCKETT: Yes.

6 ALJ DION: Mr. Wetherald, is that the summary
7 and do you agree?

8 MR. WETHERALD: Yes.

9 ALJ DION: Mr. Tricamo, is that the summary
10 and do you agree?

11 MR. TRICAMO: Yes.

12 ALJ DION: And finally, Mr. Johnson --

13 MR. JOHNSON: Yes, yes.

14 ALJ DION: Then we will see everybody
15 hopefully 9:00 subject to the phone call check. Thank
16 you.

17 (The hearing recessed at 4:23 p.m.)

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.
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7 I, COLETTE E. ROSS, Certified Court Reporter No.
8 50658 for the State of Arizona, do hereby certify that the
9 foregoing printed pages constitute a full, true and
10 accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.

13
14 WITNESS my hand this 18th day
15 of November, 2003.
16
17
18

19 Colette E. Ross
20 COLETTE E. ROSS
21 Certified Court Reporter
22 Certificate No. 50658
23
24
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